FEDERAL BUREAU OF INVESTIGATION
FOI/PA
DELETED PAGE INFORMATION SHEET
FOI/PA# 1469072-000

Total Deleted Page(s) = 4
Page 18 ~ Duplicate;
Page 19 ~ Duplicate;
Page 230 ~ Duplicate;
Page 240 ~ Duplicate;

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THIS FORM IS TO BE MAINTAINED AS THE TOP PIECE OF MAIL IN EMPLOYEE PERSONNEL FILE OF THE DESIGNATED INDIVIDUAL.

SUBJECT: William S. Sessions

Per airtel from the Director dated 7/24/92 to All SACS, LEGATS, Regional Computer Support Centers and Information Technology Centers, the following serials have been removed from employee personnel file and placed in a 67 Sub "S" Security File.

	Date of Mail
X	7/24/87
3	10/13/87
8	12/22/87
9	1/7/88

FILE NUMBER 67 - 903563

Processed By [ ]

Date

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b7C

X
2453

Agent Cover Sheet for File
4-356 (Rev. 12-20-67)

Name	SALARY CHANGES		
WILLIAM S. SESSIONS	Date	Grade	Salary
EOD Clerk	11-02-87	EX-II	89,500
EOD Special Agent			
Adjusted EOD			
Social Security Number			

Office	Date
DIRECTOR	11-2-87
Resignation	1-10-91

PERMANENT BRIEFS AND SECURITY REVIEWS			
Perm. Brief	Security Rev.	Date	Name of Briefer

FBI/DOJ

SP
ASS
SRC'D
SER
REC

ATTORNEY GENERAL OF MISSOURI
JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

REPLY
WAINWRIGHT STA
111 NORTH 7TH
ST. LOUIS, MIS
(314) 444

Exec AD Inv.
Exec AD LES
Asst. Dir.:
Adm. Servs.
Crim. Inv.
Ident.
Insp.
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Tech. Servs.
Training
Off. Liaison &
Int. Affs.
Telephone Rm.
Director's Sec'y

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b7C

December 1, 1988

Honorable William Sessions
Director, Federal Bureau of Investigation
J. Edgar Hoover Building
Washington, DC 20353

Re: S. A. [redacted] (Beaumont, Texas),
S. A. [redacted] (Beaumont, Texas),
S. A. [redacted] (Houston, Texas),
S. A. [redacted] (F.B.I. Laboratory),
S. A. [redacted] (F.B.I. Laboratory).

DEC 12 1988

Dear Judge Sessions:

In the late evening of Friday, April 10, 1987, Kathy Annette Allen, a 12-year old retarded child, was abducted from her family's mobile home on the outskirts of Ottumwa, Iowa. She was taken by two perpetrators across the state line into Missouri where she was brutally murdered. Authorities arrested Donald Eugene Petary and Andrew Wessell Six on April 11, 1987 in Moscow, Texas, nearly one thousand miles from the murder scene. Both Petary and Six were charged federally with kidnapping and with murder in the first degree by the State of Missouri.

The U. S. Attorney's Office for the Southern District of Iowa tried the two for kidnapping and convicted both. The court sentenced them to terms of two hundred years imprisonment apiece. The State of Missouri then obtained custody of the pair to pursue the murder prosecutions. Hence, the involvement of this office.

As special prosecutor for the Office of the Missouri Attorney General, I tried Defendants Petary and Six for the murder of Kathy Allen. Both received the death penalty. The felicitous verdicts in both Federal and State courts would not have been possible without the skill and dedication of several of your special agents. Please allow me to commend them to you.

5 - JUL 20 1989

Special Agents [redacted] and [redacted] b6 b7C interviewed the two defendants upon their arrest and subsequently. Through their expertise and patience, they obtained incriminating statements from each defendant. This evidence was a significant factor in the juries' determinations of guilt. Additionally, S. A. [redacted] along with S. A. [redacted] performed a painstakingly thorough search of the defendants' car which yielded the important fiber evidence that sealed the fates of Petary and Six.

S. A. [redacted] b6 b7C seized and preserved valuable hair and fiber evidence from defendant Six. Laboratory personnel S. A. [redacted] and S. A. [redacted] performed the necessary forensic examinations of the seized hair, fiber and blood samples.

At each of the multiple trials that these complex prosecutions required, all of the above-mentioned special agents testified meticulously and persuasively to the juries. Their honest, vivid and concise testimony was a credit to their professionalism and to your organization. In particular, S. A. [redacted] and S. A. [redacted] explained the complicated forensic evidence in a manner in which clearly educated the juries as to its evidentiary value and its inextricable link to the defendants' guilt.

Equally as impressive as their professional performance was their personal conduct. Although the seemingly endless series of motions and trials persisted for over one year and required many trips to remote parts of this state, I received nothing but full and courteous cooperation. Each of these men sacrificed a great deal of personal time which would have been spent with their families to assist in the successful conclusions to these prosecutions. Special Agents [redacted] and [redacted] were particularly b6 b7C helpful to this attorney in the preparation for trial.

The State of Missouri is grateful to the F.B.I. for its invaluable aid in bringing the killers of Kathy Allen to justice. I am personally grateful to each of the Special Agents mentioned for their service beyond the strict call of duty. Men like these are the foundation upon which the proud reputation of the F.B.I. is based.

Sincerely,

WILLIAM L. WEBSTER
Attorney General

Joseph M. Landolt
Assistant Attorney General

JML/b

[redacted]

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b7C

[redacted]

November 6, 1989

[redacted]

The Honorable William Sessions
Director
Federal Bureau of Investigation
J. Edgar Hoover Building
10th and Pennsylvania
Washington, D. C. 20535

Dear Bill:

My pride in and admiration for the F. B. I. is today greater than ever.

As a victim of an extortion plot, I can say this after first-hand observation of the excellent handling afforded by approximately 40 agents and eight support personnel of the Dallas office.

[redacted] organized, directed and set everything in motion. Other personnel who gave leadership were [redacted] Two agents who came on the original interview, [redacted] handled themselves perfectly.

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[redacted] is the man whom I would like to have on my side anywhere, any time. It was he who suited me out in a bulletproof vest and all electronic equipment. It was he who drove the car with me in it to the payoff spot, after instructions were received.

The agents who occupied two residences during the episode were [redacted] and [redacted] They were warm, cordial and efficient. They saw those who were waiting through a very difficult and tense period.

All in all, it was handled as a major operation. Success crowned their efforts. The writer of the extortion note was apprehended. He made a full statement of confession. He was handled by the Magistrate. The Grand Jury was in session. The extortionist was indicted and will be tried in the immediate future. An attorney was appointed for him, and if I were the attorney . . . with the evidence we have . . . I would plead him guilty.

The Bureau and all personnel who participated in this case may be justly proud. See the attached list for those agents who did participate in this successful investigation.

In view of the splendid handling of this matter, I would like to request that a copy of this communication be placed in the personnel file of each of the agents, under the heading, "Commendation."

[redacted] b6 b7C

[redacted]
Attachment

December 4, 19

Mr. William S. Sessions
Weston Center - 29th Floor
112 East Pecan
San Antonio, TX 78205

Dear Judge Sessions:

It was a pleasure to see you at the celebration of the FBI's Ninetieth Anniversary. I trust you enjoyed the day as much as we did.

During your visit you asked that I bring you up-to-date on those cases in which you are named as a defendant arising out of your service as Director. Our records indicate that you remain a defendant in your individual capacity in only two cases, both arising from the stand-off with the Branch Davidians at Waco, Texas in 1993. Those two cases, *Brown v. U.S.* and *Riddle v. Reno*, have been consolidated into *Isabel G. Andrade, et al. v. Phillip J. Chojnacki, et al.*, U.S.D.C., W.D.TX, Civil Action No. W96 CA 139. The case is pending before Judge Walter S. Smith, Jr., in the Waco Division.

After each of the ten cases now consolidated into the *Andrade* litigation was filed, the Department of Justice filed various dispositive motions on behalf of the United States and the individual defendants. On September 19, 1997, Judge Smith ordered the defendants to consolidate their previous pleadings into a single filing. The Department filed the requested pleading, a copy of which is attached, on October 31, 1997. The Court has not yet decided these motions.

In the Department, the overall defense of the United States is being handled by [redacted] Esquire, telephone 202-616-4278, and the federal defendants are represented by [redacted] Esquire, of the Torts Branch, Civil Division, telephone 202-616-4328. In our office, the defense of these cases is being coordinated by [redacted] Esquire, telephone 202-324-8550.

If you have any questions or require any assistance concerning these matters, please do not hesitate to call. I can be reached at telephone number 202-324-5020.

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MAILED 71
DEC 0 8 1998
FBI

Sincerely yours,

/S/

Thomas A. Kelley
Deputy General Counsel

Dep. Dir.
Chief of Staff
Off. of Gen. Counsel
Asst. Dir.:
Crim. Inv.
CJIS
Finance
Info. Res.
Insp.
Lab.
National Sec.
Personnel
Training
Off. of EEOA
Off. of Public & Cong. Affs.
Director's Office

067-HQ-0903563 - 32
1 - The Director
1 - [redacted]
1 - Mr. T.A. Kelley
1 - [redacted]
1 - [redacted]
MAIL ROOM [redacted]

detached 7427

9 - Kelley 7427

FBI/DOJ

September 11, 1987

Honorable Joseph R. Biden, Jr.
United States Senate
Washington, D. C. 20510

Dear Senator Biden:

Thank you for your letter of September 9th concerning my San Antonio property which contains the restrictive covenant. I have now received the specific information that the restrictive covenant was referred to in a deed dated October 8, 1981, which is recorded in Volume 2440, page 1207, of the Deed Records of Bexar County, Texas.

The October 8, 1981, deed states that "this conveyance is made and accepted subject to those restrictions appearing of record in Volume 304, page 16, Deed Records, Bexar County, Texas."

Volume 304, page 16, Deed Records of Bexar County, Texas, reflects a Warranty Deed dated December 8, 1908, which contains the offensive restriction.

As you are aware, I purchased the property on a title policy and was unaware of the restriction.

Yesterday, I contacted my lawyer in San Antonio and he confirms my belief that the restriction is unenforceable, as a matter of law.

Because of the status of the law, I trust it will be sufficient for my clear intent to be reflected by placing in any conveyance instrument the following language which would trace language from the October 1, 1981, deed:

"This conveyance is made subject to those restrictions appearing of record in Volume 304, page 16, Deed Records, Bexar County, Texas, save and except that restriction which requires that the property not be sold to, leased to, nor occupied by Negroes. Because that restriction is void, as a matter of law, as a matter of public policy and unenforceable, it is therefore repudiated by this grantor."

Exec AD Adm. ___
Exec AD Inv. ___
Exec AD LES ___
Asst. Dir.:
Adm. Servs. ___
Crim. Inv. ___
Ident. ___
Insp. ___
Intell. ___
Lab. ___
Legal Coun. ___
Off. Cong. & Public Affs. ___
Rec. Mgnt. ___
Tech. Servs. ___
Training ___
Telephone Rm. ___
Director's Sec'y ___

WSS: [redacted]

MAIL ROOM ☐

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FBI/DOJ

There may be some modification to that wording suggested by the attorney who prepares the documents. I'll be pleased to have further discussions with you concerning the acceptability of the wording prior to any deed being signed.

Sincerely,

William S. Sessions

JOSEPH R. BIDEN, Jr., DELAWARE, CHAIRMAN
EDWARD M. KENNEDY, MASSACHUSETTS
ROBERT C. BYRD, WEST VIRGINIA
HOWARD M. METZENBAUM, OHIO
DENNIS DeCONCINI, ARIZONA
PATRICK J. LEAHY, VERMONT
HOWELL HEFLIN, ALABAMA
PAUL SIMON, ILLINOIS
STROM THURMOND, SOUTH CAROLINA
ORRIN G. HATCH, UTAH
ALAN K. SIMPSON, WYOMING
CHARLES E. GRASSLEY, IOWA
ARLEN SPECTER, PENNSYLVANIA
GORDON J. HUMPHREY, NEW HAMPSHIRE

MARK H. GITENSTEIN, CHIEF COUNSEL
DIANA HUFFMAN, STAFF DIRECTOR
DENNIS W. SHEDD, MINORITY CHIEF COUNSEL

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

September 9, 1987

Hon. William S. Sessions
United States District Court
655 East Durango Boulevard
San Antonio, Texas 78206

Dear Judge Sessions:

I appreciate your letter of September 2, 1987 regarding your ownership of property and your lack of knowledge of the racially restrictive convenant on your residence in San Antonio. I understand that the covenant appears only in an old deed and not in any deed that you signed, except by reference, and I recognize that such a convenant is unenforceable; but I believe that in the position of FBI Director you would not want to give the slightest appearance of insensitivity to this issue now that you are aware that the convenant exists.

Therefore I think it would be best if you would take steps to have the covenant removed from the deed either before or at the time you convey your property to someone else. Are you willing to do this? I would appreciate your written response to this remaining question for the record.

I look forward to your prompt confirmation as the Director of the Federal Bureau of Investigation.

Sincerely,

Joseph R. Biden, Jr.
Chairman

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September 7, 1989

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MEMORANDUM TO MR. CLARKE [redacted]

I have reviewed the August 14, 1989, memorandum requesting that we implement certain aspects of our recent reorganization. I have also looked at the July 31, 1989, memorandum from Bill Baker requesting clarification on all signature authority regarding operational limits.

Since the delegation of authority for signatures is important and we do not want to handle it in a piecemeal fashion, I would suggest that you, John Collingwood and Joe Davis coordinate an effort within the Bureau to insure that the Assistant Directors have sufficient authority where necessary to sign approvals and that those authorities which are mandated for the Director's signature are handled accordingly. I want to be certain that I am in a position to respond favorably to the Congress and the Attorney General regarding questions of my oversight of the FBI.

I would like to see an all-inclusive document which lays out the authorities of the Director and those authorities which have and can be delegated to the level of Deputy Director, Associate Deputy Director or Assistant Director. I believe the attached memorandum is a start but is not an all-inclusive approach.

William S. Sessions
Director

Exec AD Adm. ____
Exec AD Inv. ____
Exec AD LES ____
Asst. Dir.:
Adm. Servs. ____
Crim. Inv. ____
Ident. ____
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Intell. ____
Lab. ____
Legal Coun. ____
Off. Cong. & Public Affs. ____
Rec. Mgnt. ____
Tech. Servs. ____
Training ____
Off. Liaison & Int. Affs. ____
Telephone Rm. ____
Director's Sec'y ____ MAIL ROOM ☐

WSS: [redacted]

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b7C

SENT FROM D.O.
TIME 1:34 p.m.
DATE 9/8/89
BY [redacted]

9/8

U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

September 4, 1991

MEMORANDUM TO MR. CLARKE

RE: ACTING DIRECTOR IN MY ABSENCE

During any time that my office advises that I will be unavailable to handle urgent items of mail that do not require my personal approval, the following will act in my stead in this order as Acting Director:

1) Deputy Director Floyd I. Clarke

2) Associate Deputy Director James Greenleaf

3) Associate Deputy Director Doug Gow

4) Assistant Director William Baker

5) Assistant Director Thomas DuHadway

My office staff will be aware at all times of who is acting in my absence when circumstances so dictate and these items will be forwarded to that person for approval.

William S. Sessions
Director

1 - Each Member of the Executive Conference
WSS [redacted]

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FBI/DOJ

March 9, 1994

Mr. William S. Sessions
3920 Argyle Terrace, Northwest
Washington, D.C. 20011

Dear Judge Sessions:

Recently, we had occasion to review the post-employment restrictions of Title 18, U.S.C., Section 207, the provision which restricts certain post employment activities of former officers and employees of the Government. During this review we discovered that the summary of post-employment restrictions provided to you shortly after you left the FBI did not correctly describe the restrictions of Section 207(c). The purpose of this letter is to advise you that, as a former employee paid pursuant to the Executive Schedule (ES), you are prohibited for one year after leaving Government service from representing third parties before any component of the Department of Justice (DOJ), not just before the FBI.

As you may recall, you requested information concerning post-employment and non-disclosure restrictions applicable to you which I provided by letter dated July 30, 1993. That letter furnished copies of pertinent statutes, regulations and summaries of the restrictions.

The letter also briefly summarized the restrictions of Section 207(c) which prohibits former senior employees from representing another person in any matter before the senior employee's former agency for one year after termination of Government service. The definition of senior employee includes both SES level officials and officials whose rate of basic pay is equal to or greater than Level V of the ES. As your salary was set by Congress at Level II of the ES, the restrictions of Section 207(c) apply to you.

FI HQ - 94-35-31

The letter continues by advising that the FBI has been designated by regulation as a separate component of the DOJ and "[t]herefore, the above restrictions only prohibit you from representing others before the FBI. You may represent third parties before other DOJ components or Government agencies if otherwise permitted by Sections 207(a)(1) and 207(a)(2)." That

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ADD Inv. ____
Asst. Dir.:
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Crim. Inv. ____
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Off. Liaison & Int. Affs. ____
Off. of Public Affs. ____
Telephone Rm. ____
Director's Sec'y ____

1 - Mr. Davis
1 - Mr. Kelley
1 - Mr. Moschella
(8)

copies detached

1 - [redacted]
1 - ALU Library
1 - ALU Tickler

copies detached

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MAIL ROOM [redacted]

statement is incorrect. In fact, you may not represent another person before any component of the DOJ for a period of one year from the date you left the FBI.

The definition of agency used in Section 207(c) is very broad and includes the DOJ and all components. However, Section 207(h)(1) authorizes the Director of the Office of Government Ethics (OGE) to designate individual components as separate and distinct from their parent department or agency. Such designations permit eligible senior employees to communicate to or appear before all other designated components of their former department or agency on behalf of other persons. The Director of OGE has designated the FBI as a separate and distinct component of the DOJ. See Title 5, C.F.R., Part 2641, Appendix B. However, Section 207(h)(2) provides that the designations by the Director of OGE under 207(h)(1) shall not apply to persons paid at a rate specified in or fixed according to Title 5, U.S.C., Chapter 52, subchapter II, which sets forth the ES pay rates.

As Director of the FBI your rate of pay was set by Congress at Level II of the ES. You were the only FBI employee paid at any level of the ES. Therefore, even though the FBI has been designated as a separate component of the DOJ, and other former senior FBI officials may appear before other DOJ components, you may not represent another person before the DOJ or any component of the DOJ for a period of one year after you left Government service.

In the event you have undertaken such representation before any component of the Department, I must advise you to discontinue such representation. Title 5, C.F.R., § 2635.107(b) provides that your good faith reliance on our prior opinion will be a factor taken into consideration by DOJ in the selection of cases for prosecution should any of your actions have violated the restrictions of Section 207. I will be happy to advise the DOJ of our prior advice on this issue if you determine it to be necessary.

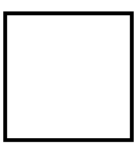
I apologize for any confusion our prior advice might have engendered and I hope it has not caused you any inconvenience. If you have any questions on this matter, please do not hesitate to call me.

Sincerely yours,

Joseph R. Davis
Assistant Director - Legal Counsel

Mr. William S. Sessions

NOTE: Pursuant to a 7/30/93 letter to Mr. WILLIAM S. SESSIONS from JOSEPH R. DAVIS, Assistant Director, Legal Counsel (copy attached less enclosures) former Director SESSIONS was provided a brief summary of the post-employment and non-disclosure restrictions and was misinformed concerning the restrictions of 18 U.S.C., 207(c). The purpose of this letter is to advise the former Director of the full extent of the restrictions of Section 207(c) as they pertain to him.



APPROVED:

Director
Dep. Dir.
ADD-Adm.
ADD-Inv.

Adm. Servs.
Crim. Inv.
Crim. Jus. Info. Servs.
Ident.
Info. Mgmt.

Inspection
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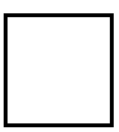

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February 7, 1994

Honorable William S. Sessions
3920 Argyle Street
Washington, D. C. 20011

Dear Judge Sessions:

On October 12, 1993, our office was contacted by [redacted] of the Fairmont Hotel, San Francisco, California. [redacted] advised that a balance of $112.43 had not been paid for your stay there on June 23, 1993 through June 24, 1993. A review of your voucher obtained from the Voucher Unit dated July 20, 1993, shows that you were reimbursed $102.12 for your lodging, plus other additional expenses, for the trip. [redacted] also stated that the balance of $112.43 was transferred from their GL (General Ledger) to CL (Corporate Ledger) on July 9, 1993. We have enclosed a copy of the hotel bill and your voucher, along with [redacted] telephone number and a note he sent asking you to contact him.

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Your cooperation in handling this matter is greatly appreciated.

Sincerely,

William A. McDermott
Section Chief
Accounting Section

Enclosures (3)

[redacted] (4)

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ADD Adm. ___
ADD Inv. ___
Asst. Dir.:
Adm. Servs. ___
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Ident. ___
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Int. Affs. ___
Off. of Public Affs. ___
Telephone Rm. ___
Director's Sec'y ___

MAIL ROOM

November 4, 1993

[redacted] b6 b7C

Dear [redacted]:

Enclosed please find the publicly available information concerning former Director William S. Sessions which you requested. I hope that this information is helpful to you.

If you require any further assistance in this matter, please do not hesitate to contact me at (202) 324-5018.

Sincerely yours,

Joseph R. Davis
Assistant Director - Legal Counsel

Enclosure

1 - Mr. Davis
[redacted] (3) b6 b7C

Dep. Dir. _____
ADD Adm. _____
ADD Inv. _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
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Off. of Public & Cong. Affs. _____
TQM Office _____
Telephone Rm. _____
Director's Office _____

MAILROOM [redacted]

9-

FBI/DOJ

August 24, 1993

Mr. William S. Sessions
3920 Argyle Terrace, N.W.
Washington, D.C. 20011

Dear Judge Sessions:

Being forwarded to you under separate cover are thirteen loose-leaf binders containing copies of speeches you delivered during your term as Director. The "end notes" have been removed from these copies as they contain a wide variety of potentially sensitive information relating to FBI investigations.

In the event you wish copies of these "end notes", we will undertake a processing review to determine whether parts of the documents must be withheld to protect classified or investigative information, or other sensitive or privileged information.

In addition, we have temporarily withheld twenty speeches, listed on an attachment to this letter, so that they may be reviewed to determine whether they contain classified information. Once that review is completed, we will promptly provide you with copes of any portion not classified or otherwise privileged. Pages identifying the documents being withheld have been inserted in the binders to indicate the location of the original documents.

Sincerely yours,

Joseph R. Davis
Assistant Director - Legal Counsel

MAILED 33
AUG 24 1993
FBI

Dep. Dir. 1 - Mr. Davis
ADD Adm. 1 -
ADD Inv. 1 -
Asst. Dir.: 1 -
Adm. Servs. 1 - Mr. Kelley
Crim. Inv. 1 -
Ident. 1 -
Insp. (Attention: CDRU)
Intell. 2 - Package Copy Enclosures
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Legal Coun. (9)
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Training
Cong. Affs. Off.
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Off. Liaison & Int. Affs.
Off. of Public Affs.
Telephone Rm.
Director's Sec'y
MAIL ROOM

APPROVED:
Director
Dep. Dir.
ADD-Adm.
ADD-Inv.
Adm. Servs.
Crim. Inv.
Crim. Jus. Info. Servs.
Ident.
Info. Mgmt.
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Off. of Public & Cong. Affs.
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LIST OF SPEECHES REMOVED FROM BINDERS

Binder Dated	Speech#	Given Before
11/3/87 - 1/24/88 & 1/30/88 - 4/7/88	7	The Society of former Special Agents of the FBI
	22	The National Association of Attorneys General
4/8/88-5/16/88 & 5/17/88-7/13/88	39	Royal Canadian Mounted Police Regimental Dinner
10/25/88 - 2/21/89	89	The American Chamber of Commerce, Bangkok, Thailand
	90	7th Annual Law Enforcement Wild Game Dinner
	91	National Association of Federal Investigators Award Banquet
	94	World Affairs Council of Orange County
	99	Media Relations In-Service Seminar FBI Academy
	101	Headquarters Special Agent and Support Staff
2/22/89 - 5/21/89	115	National Security Institute
	120	Academy of Criminal Justice Sciences
6/3/89 - 8/29/89	148	Walter Judd Lecture Series Georgetown University
1/5/90 - 5/29/90	199	International Security Management Association
	209	The Senior Seminar at the Foreign Service Institute
	221	1990 SAC Conference Opening Meeting With FBI SACs
1/14/91 - 5/30/91	301	Meridian House International "Cabinet Briefing"
	312	SAC Conference

(Continued)

6/5/91 - 10/31/91	346	American Society of Civil Engineers' Convention
11/11/91 - 5/31/92	385	Presentation of Performance Awards to Members of the Pan Am Flight 103 Task Force
11/11/91 - 5/31/92	393	Drug Enforcement Administration - SES Managers Meeting New Orleans, Louisiana

Memorandum

To : Mr. Pomerantz Date 7/1/93

From : [redacted]

Subject: PROPERTY MATTERS RELATING TO FORMER DIRECTOR SESSIONS

Purpose: To obtain the approval of the Administrative Services, Laboratory and Legal Counsel Divisions regarding the disposition of frames in which certain property of former Director's Sessions is mounted.

Details: During the transition associated with the conclusion of former Director Session's tenure, a question has arisen regarding frames in which are mounted items which the former Director may retain. Examples of property which the former Director may retain, and which were mounted at the expense of the FBI, include certificates, photographs and gifts by foreign and domestic donors that meet appropriate legal standards for retention by him.

Former Director Sessions has identified those items of personal property that were framed at government expense. He requested initially that the FBI remove such items from the frames, in order that he not retain any government property.

I and SSA [redacted] have consulted with Assistant Director HICKS, Laboratory Division, Deputy Assistant Director Thomas Kelley, Legal Counsel Division and Assistant Section Chief [redacted], Property and Procurement Management Section, Administrative Services Division regarding this matter.

AD Hicks stated that the frames were custom made to fit the personal property which they enclose. He also stated that in his judgement, the expense to the FBI of removing each item of personal property from its frame would exceed the salvage value of the frames.

Assistant Section Chief [redacted] advised that the frame remnants result from dissaembling each frame would have no value to the FBI property system.

ENCLOSURE

1 - Mr. Hicks
1 - Mr. Davis
1 - Mr. Pomerantz
1 - Former Director Sessions
1 - [redacted]

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DAD Kelley stated that under such circumstances, there was no legal bar to transfering ownership of such frames to former Director Sessions.

Recommendations: (1) That the FBI not remove property of former Director Sessions from frames in which such property was mounted by the FBI.

(2) That former Director Sessions be provided with a list of the items of personal property that were framed by the FBI for him and which the FBI has determined should not be removed from such frames, because the cost to the government would exceed any salvage value of the frames.

(3) That former Director Sessions be advised that title to the frames now vests in him and the FBI has no further interest in the frames.

(4) That copies of the list described in recommendation #2 be provided to the Laboratory, Legal Counsel and Administrative Services Divisions.

LIST OF PERSONAL PROPERTY OF JUDGE SESSIONS FRAMED BY THE FBI THAT WILL NOT BE REMOVED FROM SUCH FRAMES, BASED UPON A ANALYSIS OF THE COST TO THE GOVERNMENT AND THE LACK OF SALVAGE VALUE OF ANY RESULTING FRAME REMNANTS.

1. Resolution of Senate regarding confirmation of Judge Sessions as Director, dated 9/25/87

2. Letter from President Reagan dated 1/4/88

3. Photographs of Judge Session's swearing in as Director

4. Photograph of Mountain

5. Photograph of Judge Sessions' swearing in ceremony as FBI Director

6. Photograph of Judge Sessions with Meese and Webster

7. Drawing of Judge Sessions and Dick Tracy

8. Certificate and drawing from "Wonderful World Police"

9. Photograph of Alamo with moon

10. Photograph of Alamo without moon

11 & 12 Two paintings of boats

13. Print of "Pilgrimage to Canterbury"

14. Photograph of Judge Sessions and Gen. Colin Powell

15. Photograph of Judge Sessions, William Barr and Sen. Patrick Leahy

16. Photograph of Judge Sessions and Pres. Bush at FBI Academy ("Hogans Alley")

17. Photograph of Judge Sessions and Pres. Bush at FBI Academy near Presidential helicopter

18. Photograph of Judge Sessions and Pres. Bush seated

19. Photograph of Judge Sessions and William Webster

20. Photograph of Judge Sessions and Sen. Strom Thurmond

21. Photograph of Judge Sessions and Sen. Robert Byrd

22. Certificate from President Bush designating Judge Sessions a member of the Martin Luther King Holiday Commission

ENCLOSURE

23. Painting of Boy Scout - 6/4/90 award by Council of Boy Scouts to Judge Sessions

24. Ellis Island Congressional Medal of Honor, presented to Judge Sessions 4/26/93

TO: PERSONNEL SECTION
ASD

FROM: [redacted]

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b7C

please place the attached tickler in Director Sessions pesonnel file. The file number is indicated at the bottom in pencil. It documents information relating to his outprocessing from the FBI. Any questions, I can be reached at X-4510.

thank you

X-6028

Called [redacted] 11/30/93
To Verify exactly which file he wanted this piece of mail to go. He said the personnel file, which I indicated was a 67 file. He didn't want it to go to 62 file as it pertained to personal property of Director Session.

[redacted]

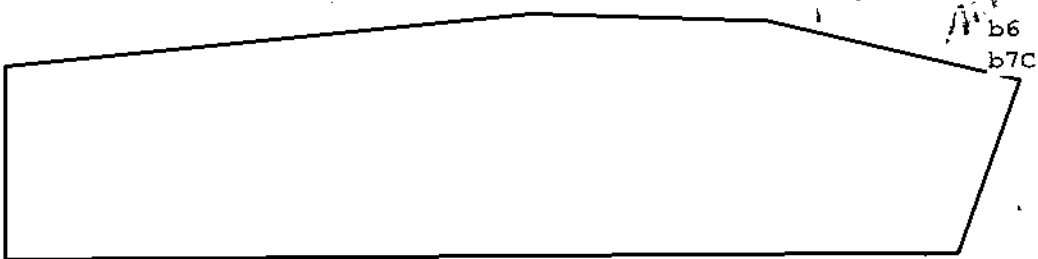
Rm 7240

Director Sessions

USA 1/4

On behalf of the
Worklife Program Group
and the
Federal Women's Program,
we thank you for your valuable contribution to
"Take Our Kids To Work Day"
at the
Department of Justice.

b6
b7C



USS 9/4

August 30, 1993

Honorable William S. Sessions
3920 Argyle Terrace
Washington, D.C. 20011

Dear Judge Sessions:

The 100 Club of Austin would like you to attend their annual dinner but are unaware of how to contact you. The person who called is [redacted] b6 b7C at [redacted] He can be reached at [redacted] Austin Office, can be reached if he can be of assistance.

If I can facilitate the contact, please let me know.

Sincerely,

John E. Collingwood
Inspector in Charge
Office of Public and
Congressional Affairs

MAILED 1:00
AUG 31 1993
FBI

Dep. Dir. ____
ADD Adm. ____
ADD Inv. ____
Asst. Dir.: ____
Adm. Servs. ____
Crim. Inv. ____
Ident. ____
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Cong. Affs. Off. ____
Off. of EEO ____
Off. Liaison & Int. Affs. ____
Off. of Public Affs. ____
Telephone Rm. ____
Director's Sec'y ____

1 - SSRA [redacted]
Austin Office
1 - Mr. Collingwood
3 - [redacted]
JEC: [redacted] (6)

Attached

[redacted] b6 b7C

APPROVED:

Director	Adm. Servs.	Inspection	Off. of EEO Affs.
Dep. Dir.	Crim. Inv.	Intell.	Off. of Liaison & Int. Affs.
ADD-Adm.	Crim. Jus. Info. Servs.	Laboratory	Off. of Public & Cong. Affs. JEC
ADD-Inv.	Ident.	Legal Coun.	TOM Off.
	Info. Mgmt.	Tech. Servs.	
		Training	

MAIL ROOM [redacted]

August 12, 1993

Mr. William S. Sessions
3920 Argyle Terrace, N.W.
Washington, D.C. 20011

Dear Judge Sessions:

This will confirm our conversation of August 11, 1993 regarding minor modifications to your Public Financial Disclosure Report (FDR) and provide you with a copy of the report as amended.

As we discussed, with regard to the listing of gifts received, attached to page 3 of the report, I advised you that the threshold value for reporting such gifts is presently $250 (even though the instructions printed on the Financial Disclosure form indicate the reporting threshold as $100). Therefore, I noted that two of the gifts on the initial list (the gift from Chief Eldron Bell and the gift from Director Ion Talpes) fall below the threshold reporting requirement and therefore are not required to be listed. We agreed those two items should be deleted. An amended listing of the gifts is attached to page 3 of the FDR. A copy of the listing as it was originally submitted is also enclosed for your information.

As you can see, I have signed the form and will forward it to the Office of the Deputy Attorney General for final review.

Sincerely yours,

JSF

Joseph R. Davis
Assistant Director - Legal Counsel

Enclosures

1 - Mr. Davis
1 - [redacted]
JRD:[redacted] (4)

62-HQ-[illegible]-26 b6 b7C

Envelope routed to LES Front Office [redacted] 1993

MAIL ROOM

Exec AD Adm. ____
Exec AD Inv. ____
Exec AD LES ____
Asst. Dir.:
Adm. Servs. ____
Crim. Inv. ____
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Training ____
Off. Liaison & Int. Affs. ____
Telephone Rm. ____
Director's Sec'y ____

FBI AUG 13 1993

August 27, 1993

Mr. William S. Sessions
3920 Argyle Terrace, N.W.
Washington, D.C. 20011

Dear Judge Sessions:

Pursuant to our conversation of August 16, 1993, enclosed please find a copy of material sent to you by Mr. Moschella on June 29, 1993 with regard to the Sumner Canary Lecture at Case Western Reserve University Law School.

Sincerely yours,

/Tom/

Thomas A. Kelley
Deputy Assistant Director
Legal Counsel

Enclosure

1 - Mr. Davis
1 - Mr. Moschella
1 - [redacted]
[redacted] (5)

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b7C

62-90573-25

APPROVED:
Director _____
Dep. Dir. _____
ADD-Adm. _____
ADD-Inv. _____
Adm. Servs. _____
Crim. Inv. _____
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Off. of Public & Cong. Affs. JEC/cm
FBIHQ Off. _____

Dep. Dir. _____
ADD Adm. _____
ADD Inv. _____
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Off. of Public Affs. _____
Telephone Rm. _____
Director's Sec'y _____

MAIL ROOM ✓ JRD

NOTE: Letter is in response to request for documents previously provided. See attached note from Mr. MOSCHELLA and a letter from Mr. COLLINGWOOD suggesting Judge SESSIONS may wish to handle this lecture personally.

PERS. REC. UNIT

June 29, 1993

Director Sessions:

Director's Sumner Canary Lecture at Case Western Reserve University Law School; October 28th - 29th, 1993

This is in resposne to your telephonic request to me today to provide to you by close of business, the results of the preliminary research that has been conducted in connection with captioned presentation. I have attached to this note copies of notes and airtels which represent our preliminary thoughts regarding cases which have provided significant guidance to the law enforcement community over approximately the past year. I do not believe that the listing at this point is as fine tuned as it could be with a more focused theme. However, we are available to work with you on this to provide materials which may be more responsive to the requirements of the lecture. It is noted that some of the Supreme Court cases go back to the end of the prior term.

Emil Moschella

1 - Mr. Davis
1 - Mr. Moschella
1 - [redacted]
[redacted]
(4)

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b7C

67-[illegible]-[illegible]-25
ENCLOSURE

July 30, 1993

The Hon. William S. Sessions
3920 Argyle Terrace, N.W.
Washington, D.C. 20011

Dear Judge Sessions:

I have just reviewed the calendar of future speech commitments for the FBI Director, and I believe there are a number of them that you should personally handle. I am, therefore, attaching the correspondence and background material for each of the following:

10/3/93 Yale Political Union
New Haven, Connecticut
(Contact: [redacted] who can be reached at [redacted] b6 b7C

10/16/93 Hate Crimes Conference of the State Bar of Texas
Austin, Texas
(Contact: [redacted] who can be reached at [redacted]

10/28-29 Sumner Canary Lectureship
Case Western University Law School
Cleveland, Ohio
(Contact: [redacted] who can be reached at [redacted]

*** Please Note- [redacted] would like the title of your speech by the second week of August.**

Fall '93 The Jefferson Literary and Debating Society
University of Virginia
Charlottesville, Virginia
(Contact: [redacted] who can be reached at [redacted]

(Continued on Next Page)

1 - Mr. Clarke (Enc.)
1 - Mr. Collingwood (Enc.)
1 - [redacted] (Enc.)
1 - [redacted] (Enc.)
1 - [redacted] (Enc.) b6 b7C
1 - Special Events (Enc.)
1 - Communications Unit (Enc.)

NOTE: Speech offerings based on Mr. Clarke's concurrence with OPCA recommendations, as noted in the attached memo, with the following exceptions: Yale Political Union has indicated to the Special Events Unit that it would like WSS to keep his appointment, but that it intends to issue a separate invitation to the new Director. [redacted] telephoned 7/30/93 to say she expected Judge Sessions to honor his commitment to speak to the lecture at Case Western Law School.

[redacted] (7)

ENCLOSURE

The Hon. William S. Sessions

6/94 Newport High School Commencement Ceremonies
Newport, Kentucky
(Contact: [redacted] who can be contacted at [redacted] b6 b7C

If I can help you with these in any other way, please don't hesitate to call.

Sincerely yours,

John E. Collingwood
Inspector in Charge
Office of Public and
Congressional Affairs

Enclosure

6/28/93

Director Sessions:

RE: SUPREME COURT DECISIONS
DEAL V. UNITED STATES
May 17, 1993
SMITH V. UNITED STATES
June 1, 1993
MINNESOTA V. DICKERSON
June 7, 1993

The Supreme Court recently decided three cases of interest to law enforcement, one of which requires minor clarifications to the Legal Handbook for Special Agents (LHBSA).

Deal v. United States

In a six to three decision, the Supreme Court upheld the imposition of five enhanced sentences of 20 years each for using a firearm "during and in relation to" the commission of six bank robberies. Title 18 U.S.C. Section 924(c)(1) prescribes a five-year sentence for the first offense, and 20-year sentences for a "second or subsequent" conviction. In a single proceeding, the defendant was convicted on six counts of bank robbery and six counts of using a firearm in violation of the statute. The court sentenced him to five years on the first firearms count, and 20 years each on the additional five, to be served consecutively.

The Court rejected defendant's argument that a "subsequent conviction" is "a criminal act after the first conviction," concluding that the defendant should not be rewarded "because he managed to evade detection, prosecution, and conviction for the first five offenses and was ultimately tried for all six in a single proceeding."

This decision does not require any change in existing FBI policy. A summary of the decision will be disseminated to the field offices for information.

1 - Mr. Clarke
1 - Mr. Gow
1 - Mr. Kennedy
1 - Mr. Potts
1 - Mr. Davis
[redacted] (12)

1 - Mr. Kelley
1 - Mr. Moschella
1 - [redacted]
1 - [redacted]
1 - [redacted]
1 - LIU File #_____

b6
b7C

Smith v. United States

In a second case where the interpretation of Title 18 U.S.C. Section 924(c)(1) was at issue, the Court held that a person who trades a firearm for cocaine is guilty of "using" a firearm within the meaning of the statute. Noting that "using" a firearm usually refers to its role as a weapon, the Court held that the statute does not limit the term to that narrow context.

This decision does not require any change in existing FBI policy. A summary of the decision will be communicated to the field offices for information.

Minnesota v. Dickerson

A unanimous Court held that an officer's sense of touch may provide a factual justification for seizing contraband detected during a lawful patdown search for weapons. The authority of officers to stop suspects when there is reasonable suspicion that "criminal activity may be afoot" and to conduct patdown searches of such suspects when there is reasonable suspicion that they are armed was settled in Terry v. Ohio in 1968. Unresolved was the question whether information acquired tactilely by an officer engaged in a lawful "stop and frisk" would support the seizure of something other than a weapon. Analogizing the sense of touch with the sense of sight, the Court noted that officers are permitted to conduct warrantless seizures of items discovered in "plain view" when they have probable cause to believe that the items are evidence or contraband. Similarly, if an officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent as contraband "its warrantless seizure would be justified by the same practical considerations that inhere in the plain view context."

Applying the principle to the facts of the case, the Court noted that the officer conducting a frisk for weapons had apparently felt a "lump" that he only concluded was contraband after "squeezing, sliding and otherwise manipulating the contents of the defendant's pocket." Because that action exceeded that which was necessary to determine if the object was a weapon, it was unrelated to the only purpose for the patdown search - the discovery of weapons - and was therefore unreasonable under the Fourth Amendment.

The Dickerson decision resolves an important aspect of Fourth Amendment law, and will be communicated to the field offices for information and for inclusion in FBI and police legal training. In addition, Sections 4-3.2 and 4-3.4 of the LHBSA will be amended to reflect this decision.

Joseph R. Davis

4/13/93

Messrs. Collingwood and [redacted] b6 b7C

Re: U. S. v. Sanusi
(E.D.N.Y. 12/7/92)

In Sanusi, CBS News sought unsuccessfully to quash a subpoena, issued at the request of defendant, compelling CBS to produce a videotape taken by its employees accompanying Secret Service Agents during the lawful search of defendant's apartment.

Babatunde Ayeni, one of several defendants in Sanusi charged with credit card fraud, subpoenaed a CBS News videotape taken during the search of his apartment. The search, which was conducted pursuant to a warrant, was filmed by a CBS crew on the scene at the invitation of the Secret Service. CBS moved to quash the subpoena on First Amendment grounds. After careful consideration and lengthy discussion, the court denied CBS's motion and held that an edited version of the tape which obscured the identity of a confidential source had to be turned over to the defense.

The Sanusi decision will be of particular importance to the media because of its analysis of the First Amendment. In essence, the court found that there is a qualified First Amendment newsgathering privilege. However, because this privilege is not absolute it can be overcome by a showing that the information sought is (1) highly material and relevant; (2) necessary or critical to the maintenance of a claim; and (3) not obtainable from other sources. Moreover, the court pointed out that the newsgathering privilege does not shield the media from ordinary legal constraints. For example, the court noted that members of the media could be liable for criminal or tortious trespass committed while in pursuit of the news.

Accordingly, the court concluded that members of the media could successfully raise the First Amendment privilege to defeat a subpoena only if a court is convinced that the interests of the media are superior to those of the party seeking compliance, and that the media is not asserting the privilege to justify otherwise illegal conduct. Finding that defendant met the three-part test establishing his interest in acquiring the videotape as superior to that of CBS News, and that the camera crew trespassed on defendants property, the court held that CBS was required to comply with the subpoena.

1 - Mr. Collingwood
1 - Mr. Potts
1 - Mr. Davis
1 - Mr. Kelley
1 - Mr. Moschella
[redacted] 10)

1 - [redacted] b6 b7C
1 -
1 -
1 -

Of particular interest to law enforcement, is the portion of the Sanusi decision dealing with the Fourth Amendment. The court initially noted that the Fourth Amendment does not regulate the conduct of private actors such as CBS. However, the Secret Service Agents executing the search warrant are government actors and, therefore, bound by the Fourth Amendment. After a discussion of the history of the Fourth Amendment, the court expressed its opinion that the government, when executing a warrant, has a fiduciary obligation to insure that the principles embodied in the Amendment are followed and that the privacy of individuals is not invaded any more than reasonably necessary. Specifically, the court made the following statement:

> "Charged as they are with the delicate and sensitive responsibility of executing a judicially sanctioned violation of a person's privacy, government agents have a duty to see that as little harm is done as is necessary to the task. Wantonly exceeding the scope of the warrant would represent a failure to perform that duty. Inviting private citizens whose presence is not necessary to the execution of the warrant to join the search party is a failure of public trust -- one that indicates a disregard of the important values at stake when the government enters a person's home." p. 27.

Although finding that the Agents actions did not rise to the level of misconduct requiring dismissal of defendant's indictment, the court strongly criticized the Agents' behavior and ordered that its opinion be brought to the attention of the highest authority in the Secret Service.

Although not relied upon by the court, the Sanusi decision is in keeping with statutory requirements regarding the execution of search warrants. Specifically, 18 U.S.C. §3105 provides as follows:

> A search warrant may in all cases be served by any of the officers mentioned in its direction or by an officer authorized by law to serve such warrant, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

Because the CBS camera crew was not at the scene to aid in the search, their presence during the execution of the warrant could be deemed a violation of this statute. (See e.g., Bills v. Aseltine, 958 F.2d 697 (6th Cir. 1992) wherein the court found that a private security officer, invited to be present and take pictures during the execution of a warrant, was not aiding in the search and his presence would have violated the statute if the executing officers had been federal agents.)

JUN-29-1993 12:36 FROM FBI ACADEMY LEGAL UNIT TO 541023 P.06

In addition to its legal analysis, the court in Sanusi also demonstrated a practical reason for excluding the media from law enforcement actions. The CBS videotape in question was reviewed in camera by the court, and it was determined that nothing on the tape would support the defendant's motion for suppression. However, the court ruled that the tape could be critical to the defendant's case at trial because it demonstrated that an exhaustive search of defendant's apartment failed to reveal any evidence of credit card fraud. Although defendant could easily make this point to a jury without the tape, the court reasoned that the video depicting defendant's wife and child cowering during the search was extraordinary evidence, and defendant could not be denied the opportunity to use its impact on the jury to his benefit. Observing that the average citizen my find the government's conduct unacceptable, the court noted that "by inviting CBS to accompany it on its search, the Secret Service may well have provided a basis for a finding of not guilty." p. 25.

It is important to note, that in addition to jeopardizing a criminal case, allowing private parties to be present during the execution of a search warrant may result in a successful civil suit. For example, in Bills v. Aseltine, 958 F.2d 697 (6th Cir. 1992), plaintiff sued officers that invited a private security guard to be present during the search of her home pursuant to a warrant. The purpose of having the security guard present was to identify stolen items at the location that were not named in the warrant. Although the officers named in the suit were initially granted summary judgment, that grant was reversed by the Court of Appeals. Finding that the presence of the private party during the search exceeded the authority of the warrant, the Court of Appeals found that the reasonableness of the action was a question for the jury to decide.

Because of the legal risks identified in the Sanusi case, it is recommended that representatives of the media not be invited to participate or be present during FBI operations without first consulting with LCD.

Joseph R. Davis

JUN-29-1993 12:36 FROM FBI ACADEMY LEGAL UNIT TO 541023 P.07

5/4/93

Director Sessions:

RE: UNITED STATES V. PADILLA
SUPREME COURT DECISION
MAY 3, 1993

In a per curiam opinion, the Supreme Court rejected a rule of the Ninth Circuit Court of Appeals that "a coconspirator's participation in an operation or arrangement that indicates joint control and supervision of the place searched establishes standing."

The issue arose from the stop and search of a vehicle by police that uncovered a large quantity of cocaine. The ensuing investigation disclosed the identities of coconspirators in the criminal activity who were not present at the time the car was stopped and searched. The District Court held that the officers lacked a reasonable suspicion to stop the car, and granted that all of the defendants had "standing" to challenge the stop and search because they were involved in a "joint venture for transportation...that had control of the contraband." The Ninth Circuit sustained the District Court's application of the "coconspirator" rule, and remanded only on the issue whether two of the defendants were sufficiently involved in the enterprise to be viewed as coconspirators.

Citing its decisions in Alderman v. U.S., 394 U.S. 165 (1969), Rakas v. Illinois, 439 U.S. 128 (1978), and Rawlings v. Kentucky, 448 U.S. 98 (1980) the Supreme Court held that the "coconspirator" rationale was contrary to the clearly established principle that "a defendant can urge the suppression of evidence obtained in violation of the Fourth Amendment only if that defendant demonstrates that his Fourth Amendment rights were violated by the challenged search or seizure." The Court stated:

> "Expectations of privacy and property interests govern the analysis of Fourth Amendment search and seizure claims. Participants in a criminal conspiracy may have such expectations or interests, but the conspiracy itself neither adds nor detracts from them."

1 - Mr. Davis
1 - [redacted]
1 - [redacted]
[redacted] (4)

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JUN-29-1993 12:37 FROM FBI ACADEMY LEGAL UNIT TO 541023 P.08

The Court remanded the case for a determination whether each defendant had "either a property interest protected by the Fourth Amendment that was interfered with by the stop of the automobile...or a reasonable expectation of privacy that was invaded by the search thereof."

The Padilla decision affirms existing case law and does not require any change in FBI policy. A summary of the decision will be communicated to the field offices for information and for inclusion in FBI and police legal training.

Joseph R. Davis

JRD 5/6

JUN-29-1993 12:37 FROM FBI ACADEMY LEGAL UNIT TO 5410?3 P.09

Airtel to All SACs and All LEGATs
RE: Supreme Court Decisions
Civil Litigation Sanctions
Willy v. Coastal Corporation - 3/3/92;
Civil Liability
McCarthy v. Madigan - 3/4/92;
Freedom of Association
Dawson v. Delaware - 3/9/92;
Entrapment
Jacobson v. U.S. - 4/6/92

Jacobson v. U.S.

In February 1984, Jacobson ordered two magazines from a California adult book store which contained photographs of nude preteen and teenage boys. At the time, such materials were not a violation of state or Federal law; however, a Federal law was enacted three months later which criminalized the receipt through the mails of sexually explicit depictions of children. Thereafter, the U.S. postal inspectors found Jacobson's name on the adult bookstore mailing list, and over the next two and a half years sent repeated mailings to Jacobson trying to determine his willingness to violate the law by ordering sexually explicit photographs of children through the mail. The mailings were disguised as surveys trying to gauge Jacobson's sexual tastes, advertisements from companies offering pornographic materials for sale, correspondence from a Postal Service employee posing as a pen pal with similar sexual tastes, and literature asserting that Government censorship of sexually explicit material was a violation of basic constitutional rights. Ultimately, in response to one of the mailings, Jacobson ordered and received a magazine entitled "Boys Who Love Boys." Jacobson was thereafter convicted for receipt of the pornographic magazine through the mail.

The Supreme Court reversed Jacobson's conviction holding that the Government had failed to prove that he "was predisposed to violate the law before the Government intervened." The Court noted that in Federal entrapment cases, the Government is required to prove beyond a reasonable doubt that a defendant is predisposed to commit the offense. However, the Government may not "originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so the Government may prosecute."

The Court ruled that Jacobson's disposition to commit the offense for which he was ultimately charged was the result of the Government's repeated contacts with him. Unlike situations where a person readily agrees to buy or sell drugs or a sting operation involving a Government-sponsored fencing operation where criminals readily and independently become

JUN-29-1993 12:43 FROM FBI ACADEMY LEGAL UNIT TO 541023 P.03

involved, the long-term contact by the Government with Jacobson actually created his predisposition for criminal conduct.

The Court found that Jacobson's 1984 purchases were not sufficient evidence of predisposition since the materials were not illegal at the time (noting that the law presumes one will conform one's conduct to the requirements of the law) and because the materials indicated only a generic interest in sexually explicit material, not all of which is illegal. In addition, Jacobson's responses to the repeated mailings over the two and a half years, some of which indicated his sexual tastes and preferences, never gave the postal inspectors reason to believe he was willing to break the law to obtain such materials. Finally, the Court noted that the mailings which purportedly decried the efforts of the Government to censor sexually explicit materials "not only excited [Jacobson's] interest in sexually explicit materials banned by law but also exerted substantial pressure on [him] to obtain and read such material as part of a fight against censorship and the infringement of individual rights."

In sum, the Court ruled that the repeated attempts of the Government to ensnare someone not predisposed to commit a criminal offense before the Government contact constituted entrapment.

This decision will have little impact on FBI undercover or sting operations. In announcing that the Government must prove a defendant who claims entrapment was predisposed before its intervention with the defendant, the Court stated its belief that such a rule would not "encroach upon Government investigatory practices." In support of that proposition, the Court cited to the Attorney General Guidelines on FBI Undercover Operations which require that an inducement to commit a crime should not be offered unless (1) there is a reasonable indication that the subject in engaging, has engaged, or is likely to engage in illegal activity; or (2) the opportunity for illegal activity has been structured so that there is reason to believe that persons drawn or brought to the opportunity are predisposed to engage in the contemplated illegal activity. Continued adherence

JUN-29-1993 12:43 FROM FBI ACADEMY LEGAL UNIT TO 5410?3 P.04

Airtel to All SACs and All LEGATs
RE: Supreme Court Decisions
Civil Litigation Sanctions
Willy v. Coastal Corporation - 3/3/92;
Civil Liability
McCarthy v. Madigan - 3/4/92;
Freedom of Association
Dawson v. Delaware - 3/9/92;
Entrapment
Jacobson v. U.S. - 4/6/92

to the Attorney General Guidelines will foreclose any adverse impact of the Jacobson decision on the FBI.

The full text of the decision will be available in the Criminal Law Reporter. The case should be discussed with all Agents during field legal training and emphasis placed on the need to comply with the Attorney General Guidelines for all undercover and sting operations.

JUN-29-1993 12:44 FROM FBI ACADEMY LEGAL UNIT TO 5410233 P.05

AIRTEL 7/31/92

Director, FBI

All SACs
All LEGATs

PERSONAL ATTENTION
ALL PRINCIPAL LEGAL
ADVISORS

SUPREME COURT DECISIONS
GRAND JURY PRACTICE
UNITED STATES V. WILLIAMS - 5/4/92
HOBBS ACT VIOLATIONS
EVANS V. UNITED STATES - 5/26/92
EXTRATERRITORIAL ABDUCTIONS
UNITED STATES V. ALVAREZ-MACHAIN - 6/15/92
JURY SELECTION
GEORGIA V. McCOLLUM - 6/18/92
EVIDENCE
UNITED STATES V. SALERNO - 6/19/92
FREEDOM OF SPEECH
FORSYTH COUNTY V. NATIONALIST MOVEMENT - 6/19/92
R.A.V. V. CITY OF ST. PAUL, MINNESOTA - 6/22/92
INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS V. LEE - 6/26/92
SPEEDY TRIAL
DOGGETT v. UNITED STATES - 6/24/92

The Supreme Court concluded its term on 6/29/92. Prior to its recess, the Court decided a number of cases of interest to law enforcement. United States v. Williams held that

1 - Mr. Clarke
1 - Mr. Greenleaf
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JUN-29-1993 12:44 FROM FBI ACADEMY LEGAL UNIT TO 5410J3 P.06

Airtel to All SACs and All LEGATs
RE: Supreme Court Decisions
Grand Jury Practice
United States v. Williams - 5/4/92
Hobbs Act Violations
Evans v. United States - 5/26/92
Extraterritorial Abductions
United States v. Alvarez-Machain - 6/15/92
Jury Selection
Georgia v. McCollum - 6/18/92
Evidence
United States v. Salerno - 6/19/92
Freedom of Speech
Forsyth County v. Nationalist Movement - 6/19/92
R.A.V. v. City of St. Paul, Minnesota - 6/22/92
International Society for Krishna Consciousness v. Lee - 6/26/92
Speedy Trial
Doggett v. United States - 6/24/92

a district court may not dismiss an otherwise valid indictment because the Government failed to disclose to the grand jury "substantial exculpatory evidence" in its possession. In Evans v. United States, a plurality of the Supreme Court held that an affirmative act of inducement, such as a request or demand for money, by a public official is not a necessary element of extortion under the Hobbs Act. In United States v. Alvarez-Machain, the Court held that a Federal district court is not deprived of jurisdiction over a defendant who was forcibly abducted from a nation with which the United States has an extradition treaty if the treaty does not prohibit such apprehensions. Georgia v. McCollum held that criminal defendants may not engage in purposeful discrimination on the basis of race in the exercise of peremptory challenges during jury selection. United States v. Salerno held that Rule 804(b)(1), Federal Rules of Evidence, which permits the use, under certain circumstances, of the prior testimony of an unavailable witness, does not apply to prior grand jury testimony if the Government did not have a similar motive in developing the testimony by direct, cross, or redirect examination as it would at trial. The Court ruled in Forsyth County v. Nationalist Movement that a regulatory scheme for the issuance of parade or demonstration permits which allowed a county administrator complete discretion to charge a fee of up to $1,000 per day for costs associated with the maintenance of public order was an unconstitutional restraint on the freedom of speech. In R.A.V. v. City of St. Paul, Minnesota, the Court invalidated a local ordinance which prohibited the display of a symbol (such as a burning cross or Nazi swastika) which one knew or reasonably should have known would arouse anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender because the ordinance permitted the

JUN-29-1993 12:44 FROM FBI ACADEMY LEGAL UNIT TO 541023 P.07

regulation of presumptively protected speech on the basis of the speech's content in violation of the First Amendment. In International Society for Krishna Consciousness v. Lee, the Supreme Court upheld a ban on soliciting money inside airport terminals, but invalidated a regulation prohibiting the distribution of literature. In Doggett v. United States, the Supreme Court ruled that the Sixth Amendment's Speedy Trial Clause prevents the prosecution of a criminal defendant who was not brought to trial until eight and one-half years after his indictment because of the negligence of the Government in locating and arresting him.

United States v. Williams

Williams was indicted by a Federal grand jury on seven counts of making false statements on bank loan applications. He subsequently successfully moved to dismiss the indictment on the ground that the Government failed to present exculpatory evidence which it possessed to the grand jury. On appeal, the Supreme Court reversed and held that the grand jury is "an institution separate from the courts, over whose functioning the courts do not preside." Because the grand jury is a separate institution, the supervisory powers of the courts do not apply, and there is no basis on which a court may order dismissal for a failure to present exculpatory evidence. Furthermore, the Court found that to require the Government to present exculpatory evidence would alter the grand jury's historical role, "transforming it from an accusatory to an adjudicatory body." Such a change in the grand jury process would have to be accomplished legislatively, not judicially.

JUN-29-1993 12:45 FROM FBI ACADEMY LEGAL UNIT TO 541023 P.08

Airtel to All SACs and All LEGATs
RE: Supreme Court Decisions
Grand Jury Practice
United States v. Williams - 5/4/92
Hobbs Act Violations
Evans v. United States - 5/26/92
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Evidence
United States v. Salerno - 6/19/92
Freedom of Speech
Forsyth County v. Nationalist Movement - 6/19/92
R.A.V. v. City of St. Paul, Minnesota - 6/22/92
International Society for Krishna Consciousness v. Lee - 6/26/92
Speedy Trial
Doggett v. United States - 6/24/92

U.S. v. Williams will not impact the traditional FBI practice of bringing all exculpatory information obtained during an investigation to the attention of the United States Attorney's Office. The entire decision can be located at 112 S.Ct. 1735 (1992).

Evans v. United States

An FBI undercover operation of public corruption resulted in the payment of $7,000 to a County Commissioner in exchange for his assistance in the rezoning of a tract of land. The $7,000 cash payment was accompanied by a check for $1,000 to the Commissioner's election campaign. The check was correctly reported, but the cash was not reported on campaign financing disclosure forms or on the Commissioner's income tax return. The defendant appealed his Hobbs Act conviction claiming there was no proof he demanded or requested the money in exchange for his official acts.

The Court held that the Hobbs Act, Title 18, United States Code (U.S.C.), Section 1951, merely requires a public official to obtain property from another under color of official right, but not that there be a demand or request for the payment. An extortion under color of official right is complete under the Hobbs Act "when the public official receives a payment in return for his agreement to perform specific official acts...[T]he Government need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts."

Hobbs Act does not require demand or request

JUN-29-1993 12:45 FROM FBI ACADEMY LEGAL UNIT TO 541023 P.09

Airtel to All SACs and All LEGATs
RE: Supreme Court Decisions
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United States v. Williams - 5/4/92
Hobbs Act Violations
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Freedom of Speech
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R.A.V. v. City of St. Paul, Minnesota - 6/22/92
International Society for Krishna Consciousness v. Lee - 6/26/92
Speedy Trial
Doggett v. United States - 6/24/92

Evans requires no change to FBI policy. The Manual of Investigative Operations and Guidelines, Part I, Section 194-3.1(5) states that "[u]nder the Hobbs Act, if an individual misuses the public trust, it matters not whether the public official induces payment to perform his/her duties..." The complete text of the case can be found at 112 S.Ct. 1881 (1992).

U.S. v. Alvarez-Machain

Dr. Humberto Alvarez-Machain, a Mexican national, was charged in connection with the torture death of a Drug Enforcement Administration (DEA) Agent. When informal negotiations with Mexican officials were unsuccessful in securing Alvarez-Machain's presence in the United States, DEA officials offered to pay a reward and expenses to Mexican contacts in return for the delivery of Alvarez-Machain to the United States. Thereafter, he was forcibly kidnapped and flown to the United States where he was arrested. The United States attempted to try Alvarez-Machain over Mexico's protest and demand for his repatriation. The trial court granted a motion to dismiss the prosecution on the basis that it lacked jurisdiction to try the defendant because his abduction had violated the Extradition Treaty between the United States and Mexico. The Court of Appeals affirmed. On appeal, the Supreme Court reversed.

The Court reasoned that the Extradition Treaty did not expressly preclude the forcible abduction of persons from one country to another to stand trial on criminal charges and refused to interpret the Treaty so as to imply a term prohibiting prosecution where the defendant's presence is obtained by means other than those established by the Treaty. The Court relied on

JUN-29-1993 12:46 FROM FBI ACADEMY LEGAL UNIT TO 541023 P.10

its earlier decision in Ker v. Illinois, 119 U.S. 436 (1886), where the Court concluded that a forcible abduction which does not offend due process does not deprive a court of jurisdiction over a defendant, and distinguished U.S. v. Rauscher, 119 U.S. 407 (1886), which held that a person whose presence was obtained pursuant to an extradition treaty could not be tried on an offense other than that upon which the extradition was based.

Alvarez-Machain is significant for several reasons. First, the Court effectively extended the rule of Ker to sustain the jurisdiction of Federal courts over defendants whose presence is obtained by means other than an existing extradition treaty. Second, it recognized that the diplomatic channels of extradition agreements are not the exclusive methods by which an international fugitive may be subjected to the jurisdiction of U.S. courts. Third, although forcible abductions may be "shocking...and in violation of general international law principles," the response to diplomatic protests and international repercussions, including the decision to repatriate the abducted defendant, is a matter for the executive branch of the United States Government.

Although Alvarez-Machain validates a prior legal opinion of the Department of Justice concerning the legal authority of FBI Agents to apprehend fugitives located in a foreign country, it does not provide authority for FBI field offices to conduct such operations. Obviously, any unilateral extraterritorial arrest raises significant political and foreign policy issues that must be considered at the highest levels of Government. After this decision was announced, the Bush administration noted that with respect to Mexico, it would not

JUN-29-1993 12:46 FROM FBI ACADEMY LEGAL UNIT TO 5418023 P.11

tolerate any transborder abduction, whether by U.S. officials (Federal, state, or local) or private individuals (bounty hunters, bondsmen, or Mexican officials acting without the authority of their government). Any extraterritorial arrest operation must be approved by FBIHQ. The full text of the Alvarez-Machain decision can be found at 112 S.Ct. 2188 (1992).

Georgia v. McCollum

Three white defendants were charged with aggravated assault and simple battery against two African-Americans. Before jury selection began, the prosecution moved to prohibit the exercise of the defendants' peremptory challenges on the basis of race. The trial court denied the motion; the state Supreme Court affirmed that decision. On appeal, the Supreme Court reversed.

The Court ruled that the use of peremptory challenges on the basis of race undermines public confidence in the judicial system and constitutes a denial of equal protection. The Court concluded: "Just as public confidence in criminal justice is undermined by a conviction in a trial where racial discrimination has occurred in jury selection, so is public confidence undermined where a defendant, assisted by racially discriminatory peremptory strikes, obtains an acquittal."

Georgia v. McCollum, is the most recent of a line of cases prohibiting the use of peremptory challenges on the basis of race in any judicial proceeding. In Batson v. Kentucky, 476 U.S. 79 (1986), the Court held that a defendant may establish a prima facie case of purposeful discrimination in selection of a jury based solely on the prosecutor's exercise of peremptory

JUN-29-1993 12:47 FROM FBI ACADEMY LEGAL UNIT TO 5410?3 P.12

Airtel to All SACs and All LEGATs
RE: Supreme Court Decisions
Grand Jury Practice
United States v. Williams - 5/4/92
Hobbs Act Violations
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United States v. Salerno - 6/19/92
Freedom of Speech
Forsyth County v. Nationalist Movement - 6/19/92
R.A.V. v. City of St. Paul, Minnesota - 6/22/92
International Society for Krishna Consciousness v. Lee - 6/26/92
Speedy Trial
Doggett v. United States - 6/24/92

pamphleteering" of groups such as ISKCON, the Court ruled the Port Authority failed to meet its burden of justifying the restriction on speech worked by reason of the ban on the dissemination of literature.

The Lee cases will have no impact on FBI operations and procedures. Legal Advisors should be made aware of the case, however, for use in police legal instruction. The full text of the decisions can be found at 51 Cr.L. 2253 and 51 Cr. L. 2265 (1992).

Doggett v. United States

In February, 1980, Doggett was indicted for conspiring to import and distribute cocaine. When an arrest of Doggett was attempted, it was learned that he had left the country for Columbia but apparently not in fear of the pending charges. Approximately 18 months later, it was learned that Doggett was in custody in Panama. An informal request was made to Panama for Doggett's expulsion, but no follow-up investigation was conducted. In September, 1982, Doggett reentered the United States and settled in Virginia where he apparently led a law-abiding life. In September, 1988, Doggett was located and arrested by the Marshals Service during a routine cross-check of credit records and outstanding warrants. Doggett moved to dismiss the charges claiming a speedy trial violation. His motion was denied for failure to show the delay between indictment and trial had prejudiced him in any way. The Supreme Court reversed.

JUN-29-1993 12:47 FROM FBI ACADEMY LEGAL UNIT TO 5410?3 P.13

Airtel to All SACs and All LEGATs
RE: Supreme Court Decisions
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Forsyth County v. Nationalist Movement - 6/19/92
R.A.V. v. City of St. Paul, Minnesota - 6/22/92
International Society for Krishna Consciousness v. Lee - 6/26/92
Speedy Trial
Doggett v. United States - 6/24/92

The Sixth Amendment guarantee of a speedy trial has been qualified in earlier Supreme Court cases and requires an analysis of four factors: (1) whether delay before trial was uncommonly long; (2) whether the government or the defendant is more to blame for that delay; (3) whether the defendant, in due course, asserted his right to a speedy trial; and (4) whether the defendant suffered prejudice as a result of the delay. Applying that standard to the facts in Doggett, the Court concluded there had been a Sixth Amendment violation.

First, the Court noted that postaccusation delay becomes "presumptively prejudicial" at least as it approaches one year. Because the trial did not occur until six years after Doggett reentered the country, the Court noted that the delay was at least six times longer than would normally be required to become presumptively prejudicial. Second, the Court concluded that the Government's conduct was the cause of the delay at least for that period of time following Doggett's return to the United States. The trial record established that there was no serious effort to determine Doggett's in-country status or to locate him abroad after it was learned in 1982 that he was incarcerated in Panama. Third, since there was no proof that Doggett knew of the pending indictment, the Court found that he could not be penalized for invoking his speedy trial right only after his arrest. Finally, the Court noted that unreasonable delay between formal charges and trial can produce long-term pretrial incarceration, anxiety, and concern, and, most importantly, the possibility that the accused's defense will be impaired by the lapse of time. Key to the Court's holding in favor of Doggett was the Government's negligence in attempting to locate and try Doggett: "[T]he weight...assign[ed] to official negligence

JUN-29-1993 12:48 FROM FBI ACADEMY LEGAL UNIT TO 541023 P.14

compounds over time as the presumption of evidentiary prejudice grows. Thus, our toleration of such negligence varies inversely with its protractedness...and its consequent threat to the fairness of the accused's trial." Even where the defendant is unable to prove specific prejudice to his defense, where the negligence results in extraordinary delay, a court is empowered to dismiss the indictment on the basis of the Speedy Trial Clause of the Sixth Amendment.

Doggett v. U.S. requires no change to FBI policy or practice. The FBI's practice of conducting periodic file reviews should ensure that there is no extraordinary delay in the prosecution of indicted defendants. Agents should be alerted to the decision and reminded of their obligation to conscientiously investigate and assist the prosecution of all cases. The text of the decision is at 51 Cr.L. 2244, 60 U.S.L.W. 4741 (1992).

JUN-29-1993 12:48 FROM FBI ACADEMY LEGAL UNIT TO 5410235 P.15

for containers placed in vehicles but has not changed the warrant requirement for separate containers outside the vehicle context. U.S. v. Chadwick, 433 U.S. 1 (1977).

U.S. v. Whitfield, 939 F.2d 1071 (D.C. Cir. 1991)

In Whitfield, the U.S. Court of Appeals for the District of Columbia reversed a conviction for theft of cash from a Brinks storage facility due to an illegal search and seizure of cash from the defendant's bedroom.

In the case, the defendant, a 29-year-old employee of a company that cleaned a Brinks facility in the District of Columbia, was videotaped improperly entering and leaving a Brinks vault from which $43,000 was found missing. FBI Agents obtained the defendant's home address and went there where they were met by the defendant's mother. The defendant's mother told the Agents that the defendant was not home and that while the home was hers, the defendant lived there with her and paid rent when he was able. The mother then consented to a search of her son's room and took the Agents upstairs to the defendant's bedroom where they discovered some of the money stolen from the Brinks facility in the pockets of four of the defendant's coats found in his closet.

The defendant's motion to suppress the cash was denied by the district court relying on Illinois v. Rodriguez, 110 S.Ct. 2793 (1990), which held that a search based on the consent of a third party is reasonable if the searching officers reasonably believe the third party has authority to consent, even if the third party does not have that authority.

The U.S. Circuit Court of Appeals for the District of Columbia reversed the district court and held that the searching Agents could not reasonably have believed that the mother had authority to consent to the search of her son's bedroom. The court found that the Agents could have believed that the mother had joint access but not mutual use of the room as required by U.S. v. Matlock, 415 U.S. 164 (1974). The court stated that the Agents never asked the mother if she cleaned her son's room or made any other use of the room, and thus, they had no way of knowing whether the mother permitted her 29-year-old son to have exclusive use of the room.

The U.S. Attorney's Office has decided not to seek a rehearing, and the case has been dismissed.

JUN-29-1993 12:49 FROM FBI ACADEMY LEGAL UNIT TO

U.S. v. Carter, 969 F.2d 197 (6th Cir. 1992)

In Carter, the U.S. Circuit Court of Appeals for the Sixth Circuit reversed a drug conviction because of the erroneous admission at trial of financial information about the defendant.

This case involved the purchase of 500 grams of cocaine from the defendant by an FBI Undercover Agent and an FBI informant. At trial, the Government, over defense objections, introduced financial evidence about the defendant including testimony from an Agent that the defendant had not filed Federal income tax returns for the years 1985 through 1990.

The Sixth Circuit reversed the defendant's conviction finding that the financial information was erroneously admitted by the district court. The court stated that the evidence concerning the defendant's failure to file income tax returns was not probative of whether the defendant engaged in the drug transaction for which he was convicted. The court noted that while there are cases that allow the Government to use a defendant's tax returns and evidence of spending habits to obtain a narcotics conviction, such evidence is generally only admissible in a Continuing Criminal Enterprise case under Title 21, U.S.C., Section 848 or where the defendant engages in extravagant spending and/or possesses massive unreported wealth.

The Sixth Circuit has denied a rehearing en banc and the Assistant United States Attorney intends to retry the case.

Sammons v. Taylor, 967 F.2d 1533 (11th Cir. 1992)

In this civil suit by an arrestee against FBI Agents for an unconstitutional automobile impoundment and inventory, the U.S. Circuit Court of Appeals for the Eleventh Circuit denied the Agents' summary judgment motion based on qualified immunity finding that there were disputed issues of material fact concerning whether the impoundment and inventory was a pretext for a criminal evidence search.

This civil case arose out of an arrest of the plaintiff by FBI Agents while he and his wife were in their car. The plaintiff alleged that he asked the Agents to allow his wife to take the car home, but the Agents declined his request. The Agents claimed that the plaintiff's wife did not have a valid driver's license and that she requested that she be driven to her father's house. After the plaintiff's car was impounded and the contents inventoried, sheriff's officers and an Agent found

JUN-29-1993 12:49 FROM FBI ACADEMY LEGAL UNIT TO

$9,020 secreted in a Coca-Cola container. The plaintiff's civil suit was dismissed by the district court based on qualified immunity, but the Eleventh Circuit reversed in part and remanded the case to the district court.

The Eleventh Circuit found that the Supreme Court has clearly ruled that inventory searches may not be conducted in order to investigate suspected criminal activity and, therefore, the requirement that an inventory search be conducted on the basis of something other than suspicion of evidence of criminal activity is a clearly established right. The court concluded that there were factual disputes which could not be resolved prior to trial concerning whether the decision to impound the car was based on a pretext for a criminal search for evidence.

The attorneys defending the FBI Agents have resubmitted a motion for summary judgment with new factual material concerning the reason for the impoundment.

The LHBSA, Section 5-7.2, states that there may be situations where FBI Agents may have a legal duty to conduct impoundment/inventories of vehicles, such as where a subject is arrested in his vehicle away from home and cannot personally arrange its storage; the vehicle cannot be left at the arrest scene; local authorities are either unavailable or refuse to take possession of the vehicle; and no independent justification exists for seizing the car. Agents should be advised of this case and made aware of the language in South Dakota v. Opperman, 482 U.S. 364 (1976), Colorado v. Bertine, 479 U.S. 367 (1987); and Florida v. Wells, 110 S.Ct. 1632 (1990), which indicates that using an inventory search to search for criminal evidence is not allowed. In Florida v. Wells, 110 S.Ct. at 1635, the Court stated, "Our view that standardized criteria...or established routine...must regulate the opening of containers found during inventory searches is based on the principle that an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence." The Supreme Court has stated that an inventory search is for administrative purposes in order to protect the owner's property; to insure against claims of lost, stolen, or vandalized property and to guard law enforcement officers from danger.

U.S. v. Jenkins, Civil Action No. H-91-50 (U.S.D.C., S.D. Texas, 9/10/92)

In this interstate transportation of obscene material case, the U.S. District Court for the Southern District of Texas

JUN-29-1993 12:58 FROM FBI ACADEMY LEGAL UNIT TO 5410235 P.18

he had invoked. The Second Circuit stated that even if the Agents improperly initiated the discussions with the defendant after he invoked his right to counsel, the fruits of the confession may be admissible if the defendant knowingly and intelligently waived the right he invoked. The Second Circuit noted that in Michigan v. Harvey, 494 U.S. 344 (1990), the Supreme Court ruled that a Sixth Amendment violation of the right to counsel in obtaining a confession still allowed the use of the confession for impeachment purposes if the confession was given after a knowing and voluntary waiver of the right to counsel. The Second Circuit concluded that the district court did not determine whether the defendant's waiver, if any, was knowing and voluntary and remanded for further development of the record.

The case is pending decision by the district court on the issue of whether the waiver was voluntary and knowing. The AUSA has also argued that inevitable discovery (the car service driver would have inevitably been discovered) is a basis for the admissibility of the testimony.

U.S. v. Hines, 955 F.2d 1449 (11th Cir. 1992)

In Hines, the U.S. Court of Appeals for the Eleventh Circuit reversed the rape convictions of two defendants and remanded the case for a new trial because two photographic spreads were improperly introduced at the defendants' trial.

This case arose out of an alleged rape on a military base. Prior to trial, an FBI Agent prepared two photographic spreads from which the victim identified the defendants. At trial, the defendants admitted having intercourse with the victim, but maintained that she consented. Over defense objections, the district court allowed the Government to introduce the photographic spreads as evidence of the prior identification by the victim since her credibility had been attacked, and it demonstrated the efforts she made in going to the police station and identifying the defendants. The defendants were then convicted.

The Eleventh Circuit concluded that the admission of the photographic spread inflicted severe damage on the defendants' credibility in an unfairly prejudicial way and reversed the conviction. The Eleventh Circuit determined that admissibility of the photographic spreads should be based on (1) whether the Government had a demonstrable need to introduce

JUN-29-1993 12:50 FROM FBI ACADEMY LEGAL UNI

the photographs, and (2) whether the photographs, if shown to the jury, implied that the defendants had prior criminal records. The court found that there was no need to show the photographs to the jury since identification was not an issue. Also, the court stated that the photographs and the manner they were introduced at trial, implied that the defendants had prior criminal records. The court noted that in one photographic spread, five of the six photographs depicted men holding what appeared to be police identification boards; two of the photographs, including one of the defendant's, depicted men wearing orange institutional uniforms and the photographic spread was presented in a folder marked, "'MUG - SHOW-UP FOLDER.'" The court listed similar problems in the second photographic spread. In addition, when the photographic spreads were introduced as evidence, the Agent testified that the photographs were obtained from closed files of the police department. The court stated that the defendants' photographs and the Agent's testimony clearly indicated to the jurors that the defendants had been in police custody and since the key issue at the trial was the defendants' credibility, the introduction of the photographs was unfairly prejudicial. The court remanded the case to the district court for a new trial.

This case illustrates the problems which can occur when photographs in a photographic spread include identification boards or other indications that a defendant was convicted or in police custody at the time the photograph was taken. Agents should be reminded that use in photographic spreads of photographs with criminal indications such as identification boards may not only lead to problems at trial, such as unfair prejudice to the defendant, but may also be unduly suggestive and in violation of the Due Process Clause. The LHBSA will be amended to reflect that photographs used in photographic spreads should not depict any indications of prior criminal behavior.

U.S. v. Falon, _____ F.2d _____ (1st Cir. 1992)

In Falon, the U.S. Court of Appeals for the First Circuit ruled that certain records and items seized by FBI Agents pursuant to a search warrant were admissible, but upheld the district court's suppression of other personal records and items seized in the search.

In the case, the FBI was investigating the defendant in connection with an "advance fee scheme." Agents obtained a search warrant for the defendant's business, which was being run out of his home, and listed as the items to be seized various business records, office equipment, all of defendant's

JUN-29-1993 12:51 FROM FBI ACADEMY LEGAL UNIT TO 5410?3 P.20

Airtel to All SACs and All LEGATs
RE: Quarterly Report of Legal Problems
9/16/91 - 12/15/91

Judicial Criticism

U.S. v. Mottl, 946 F.2d 1366 (8th Cir. 1991)

In Mottl, the Eighth Circuit Court of Appeals criticized the FBI for interviewing a bank theft suspect in an FBI office without giving him Miranda warnings.

In this case, an FBI Agent interviewed a bank employee who had balanced the vault on the day a $10,000 shortage was discovered. The employee did not want the interview to take place at the bank and at the Agent's suggestion, the interview was conducted at the FBI office. The interview began at 11:45 a.m. and the employee confessed at 1 p.m., signed a written confession at 1:30 p.m., and then returned to work. The Agents conducting the interview did not give the defendant Miranda warnings prior to the interview.

Citing U.S. v. Griffin, 922 F.2d 443 (8th Cir. 1990), reported in the Quarterly Report of Legal Problems for the period 12/16/90-3/15/91, the court held that the confession was admissible but stated that it was a very close case. The Eighth Circuit criticized the fact the interviewing Agents neglected to inform the defendant that he could terminate the interview at will and did not let him know at the outset of the interrogation that they did not intend to arrest him. The court added that given the FBI's legacy of fairness, it did not see why the Agents elected not to read the defendant his Miranda warnings and that in somewhat similar circumstances, a court might well conclude that custody existed.

The Legal Handbook for Special Agents (LHBSA), Section 7-3.2, pages 81-82, does not require the provision of Miranda warnings in the situation described in Mottl nor does it require that an interviewee be advised by Agents that the interviewee is free to terminate the interview at will and is not under arrest. The LHBSA states that Miranda warnings must be provided when an interviewee is significantly restricted in his/her freedom of action. This situation can arise when, judging the totality of circumstances, a reasonable person in the position of the interviewee would believe that custody exists. Further, the LHBSA provides that if an interviewee who is not in custody makes an inquiry of the interviewing Agents as to his/her custodial status, the Agents should dispel the doubt by telling the person that he/she is not in custody. In light of Mottl, Agents in the Eighth Circuit conducting noncustodial interviews of suspects in FBI space should consider advising the suspect at the outset that he/she is not under arrest and is free to terminate the interview.

June 29, 1993

Director Sessions:

Re: Daubert v. Merrell Dow Pharmaceuticals, Inc.
U.S. Supreme Court No. 92-102

Yesterday, the United States Supreme Court, in a unaminous decision (attached), ruled that the Frye "general acceptance" test for admitting expert scientific testimony was superceded by the Federal Rules of Evidence. The Court said, "That austere standard [Frye], absent from and incompatible with the Federal Rules of Evidence, should not be applied in federal trials."

Seven Justices (Rehinquist and Stevens, dissenting) joined in the remainder of the opinion, giving guidance to lower courts regarding the admissibility of expert scientific evidence. The majority noted that FRE 702 cannot be read in isolation. Other rules controlling admissibility in general, such as FRE 104 (Preliminary Admissibility Questions) and 403 (Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time), must also be considered. For scientific evidence to be admitted the proponent must show it is relevant and reliable. The trial court must make a preliminary assessment of whether the expert's underlying reasoning or methodology is scientifically valid and can be properly applied to the facts at issue. The Court suggests several factors a trial court should consider when determining the admissibility of expert scientific testimony. They include, but are not limited to: peer review, potential error rate, existence and maintenance of standards, and whether the scientific theory or methods have attracted widespread acceptance within the relevant scientific community. The Court said the inquiry is flexible and must focus "solely on principles and methodology, not on the conclusions they generate."

The dissenting opinion expresses a view that the Court's guidance goes beyond the issues presented by the appeal. The dissent does not challenge the reasoning of the guidance, other than to characterize it as being "general observations" which are vague and abstract. The dissent contends that such guidance by the Court should be given only after review of the facts related to issues in a specific controversy.

Enclosure

1 - Mr. Hicks (Enc.)
1 - Mr. Kelley (Enc.)
1 - [redacted] (Enc.)
1 - Mr. Moschella (Enc.)
1 - [redacted] (Enc.)
1 - [redacted] Enc.)
[redacted] (14)

1 - [redacted] (Enc.)
1 - [redacted] (Enc.)
1 - [redacted] (Enc.)
1 - [redacted] (Enc.)
1 - [redacted] (Enc.)
1 - [redacted] (Enc.)
1 - [redacted] (Enc.)

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The Court's ruling will have an immediate impact on the introduction of DNA profiling evidence in Federal prosecutions. In the future, forensic evidence developed by emerging technologies should face a lower threshold of admissibility than that experienced during the development of forensic DNA technology. Furthermore, a number of states have adopted rules of evidence similar to the Federal Rules, and the Court's ruling can be expected to carry a great deal of persuasive weight. The Court's rejection of the Frye standard, and criticism that the "general acceptance" standard is too narrow and restrictive to serve as a useful rule of admissibility, may also be persuasive in jurisdictions which follow Frye as the common law of evidence.

I will monitor the effect of this ruling on the admission of DNA profiling evidence and other emerging forensic technologies and keep you advised of any significant developments.

Joseph R. Davis

6/29/93

Director:

RE: DECISIONS FROM SUPREME COURT
REGARDING FORFEITURE OF ASSETS

This note is to advise you of two cases decided by the Supreme Court of the United States on 6/28/93, one involving the constitutional implications (both First Amendment and Eighth Amendment) of a RICO forfeiture predicated on obscenity violations and the other involving the Eighth Amendment implications of a civil forfeiture of real property. While the court found that RICO, as applied did not offend the First Amendment, the civil forfeiture of property under Title 21, U.S.C., Sections 881(a)(4) and (a)(7) may violate the Eighth Amendment. Legal Counsel Division will prepare a communication to the field advising of the decisions and the possible effects of these decisions on the FBI's forfeiture efforts.

Constitutional Implications of a RICO Forfeiture Predicated on Obscenity.

In Alexander v. United States, the Supreme Court was asked to decide two questions relating to the use of forfeiture under RICO (Racketeer Influenced and Corrupt Organizations Act, codified at Title 18, U.S.C., Section 1961, et seq.): Whether the forfeiture provisions of the RICO statute violate the First Amendment when the predicate acts of racketeering are obscenity violations and the forfeited property consists of the assets of a business dealing in sexually explicit magazines and video cassettes; and whether the forfeiture of Alexander's property consisting of ill-gotten gain and property that facilitated the illegal activity was disproportionate to his crimes, in violation of the Eighth Amendment.

Ferris Alexander was convicted of, inter alia, 17 counts of obscenity and three counts of racketeering, predicated upon obscenity, under the RICO statute. Alexander operated an

1 - Mr. Clarke
1 - Mr. Gow
1 - Mr. Kennedy
1 - Mr. Potts
1 - Mr. Pomerantz
1 - Mr. Davis
1 - Mr. Kelley
1 - Mr. Moschella
(1) - [redacted]

[redacted] (10)

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b7C

"adult entertainment" business for more than 30 years. This business involved the selling of pornographic magazines, sexual paraphernalia, and videotapes of a similar nature. The sales of the sexually explicit materials generated millions of dollars in annual gross receipts for Alexander. The jury at Alexander's trial in Minneapolis found four magazines and three video cassettes obscene and this was the basis for the obscenity and RICO convictions.

Alexander was sentenced to a total of six years imprisonment, fined $100,000, and ordered to pay certain costs. In addition the court ordered, under the authority of Section 1963, of Title 18, U.S.C., the forfeiture of his interest in several pieces of commercial real estate, his wholesale and retail businesses, and the bank accounts, furniture, fixtures and inventory of those businesses. He was also ordered to forfeit almost $9 million which was determined to have been the proceeds obtained by him from his racketeering activity. On appeal to the Eighth Circuit Court of Appeals, Alexander's convictions were affirmed, as were the orders of forfeiture. The Supreme Court granted Alexander's petition for writ of certiorari.

Alexander's appeal contended that the forfeiture of non-obscene expressive material under the forfeiture provisions of the RICO statute violated the First Amendment. While recognizing the chilling effect RICO forfeiture provisions could have on the exercise of First Amendment rights, the appellate court upheld the forfeiture. The Court of Appeals found there was no First Amendment violation as long as there was a sufficient nexus established between the illegal gains from racketeering and the property forfeited. The appellate court had also rejected Alexander's claim that the forfeiture was violative of the Eighth Amendment's ban on cruel an unusual punishment. The appellate court found strict proportionality between crime and punishment was not required by the Eighth Amendment.

In its decision, authored by Chief Justice Rehnquist, the Supreme Court found that RICO forfeiture as applied in this case did not violate the First Amendment because it was a permissible criminal punishment, not a prior restraint on speech. The assets were forfeited because they were directly related to past racketeering violations, and there were ample procedural safeguards employed (a full criminal trial on the merits of obscenity) ensuring there was no premature seizure of protected expressive material. The threat of forfeiture has no more of a "chilling" effect on free expression than the threat of a prison term or a large fine. The Court has previously held such threats not to be a violation of the First Amendment. Fort Wayne Books, Inc. v. Indiana, 489 U.S. 46 (1989).

The Court found, however, that the Court of Appeals failed to distinguish between the Cruel and Unusual Punishment Clause of the Eighth Amendment and the Excessive Fines Clause. Instead that court had incorrectly lumped the two together in disposing of Alexander's Eighth Amendment claims. The Supreme Court found that the forfeiture of Alexander's entire business should have been examined by the appellate court to determine if the forfeiture resulted in an excessive penalty under the Excessive Fines Clause. The Court vacated the judgment of the Court of Appeals and remanded the case to properly consider the claim that the RICO forfeiture was excessive in light of Alexander's extensive criminal activities.

Eighth Amendment Implications of Civil Forfeiture Under the Controlled Substances Act

Austin v. U.S. involved an appeal by an unsuccessful claimant to the Eighth Circuit Court of Appeals. The Eighth Circuit had affirmed a decision of the U.S. District Court for the District of South Dakota (reported at 964 F.2d 814). The district court had granted a Government motion for summary judgment in a forfeiture case brought under Title 21, U.S.C., Section 881. The Government sought the forfeiture of an automobile body shop and a mobile home owned by Austin. This action was filed after Austin was arrested for selling two grams of cocaine at his body shop. He had stored the cocaine in the mobile home located near the body shop. Subsequent searches revealed marijuana and drug paraphernalia at both locations. Austin pled guilty to state charges of possession of cocaine with intent to distribute, but contested the forfeiture of his property.

The Circuit Court of Appeals held that the Eighth Amendment did not apply in civil forfeiture cases because the Government was proceeding against the property in an in rem action where the focus of the action was on the guilt or innocence of the property rather than the owner. The issue before the Supreme Court in this case was whether the civil forfeiture of property valued at $38,000 used by the owner to facilitate his drug trafficking violated either the "Cruel and Unusual Punishment" Clause or the Excessive Fines Clause of the Eighth Amendment.

The Supreme Court held that forfeiture under Sections 881(a)(4) and (a)(7) are monetary punishments and, as such, are subject to the limitations of the Eighth Amendment's Excessive Fines Clause. The Court reached this decision by finding that historically in rem forfeitures were understood to be, at least in part, punishment, and that the legislative history of Section 881 confirms the punitive nature of the forfeiture remedy available under that section. The Court found support for this position in the statutes used in this case to forfeit the

property, which specifically provide for an innocent owner defense. The Court reversed the decision of the Eighth Circuit and remanded for further proceedings consistent with its decision.

J. R. Davis

5/25/93

Director Sessions:

Re: U.S. DEPARTMENT OF JUSTICE,
ET AL., Petitioners v.
VINCENT JAMES LANDANO
ON WRIT OF CERTIORARI TO THE
U.S. COURT OF APPEALS FOR THE
THIRD CIRCUIT

In my earlier note to you, dated 2/23/93 (copy attached) I advised that the Supreme Court had granted our petition for a writ of certiorari in this Freedom of Information Act (FOIA) lawsuit and would hear oral argument on 2/24/93. Respondent Vincent James Landano, plaintiff in the courts below, filed FOIA requests with the FBI in 9/88 and 1/89, for the information the FBI had compiled in the course of its involvement in a state murder investigation that had resulted in Mr. Landano's conviction for the 1976 murder of John Snow, a New Jersey police officer. The FBI released responsive materials to Mr. Landano, but withheld information pursuant to various FOIA exemptions, primarily the (b)(6) and (b)(7)(C) privacy exemptions and the (b)(7)(D) confidential source exemption, which permits the FBI to protect the identities and information furnished by sources who provided information during the course of a criminal investigation with either an express assurance that the information they furnished and the fact of their cooperation with the FBI will be held in confidence or under circumstances from which such an assurance can be inferred.

At issue before the Supreme Court was the standard to be used in determining whether the FBI has met its burden of establishing that when an individual or an institution furnished information to the FBI during a criminal investigation, and

Enclosures (2)

1 - Mr. Clarke (Encs.)
1 - Mr. Kennedy (Encs.)
1 - Mr. Gow (Encs.)
6 - [redacted] (Encs.)
Attention: [redacted] (Encs.)
Attention: [redacted] (Encs.)
Attention: [redacted] (Encs.)
Attention: [redacted] (Encs.)
Attention: [redacted] (Encs.)
2 - Mr. Potts (Encs.)
Attention: [redacted] (Encs.)
[redacted] (18)

1 - Mr. Kelley (Encs.)
1 - [redacted] (Encs.) b6
1 - Mr. Moschella (Encs.) b7C
1 - [redacted] (Encs.)
1 - [redacted] (Encs.)
1 - IPALU

there was no express assurance of confidentiality given, the source did so with at least an implicit assurance of confidentiality, thus making the source a "confidential source", protectable by assertion of FOIA exemption (b)(7)(D). The U.S. Court of Appeals for the Third Circuit rejected the FBI's assertion of Exemption (b)(7)(D) to protect any source not expressly assured confidentiality, and held that before the FBI could assert (b)(7)(D) to protect such sources it must demonstrate on a case-by-case basis the circumstances existent in each and every interview which support an inference of confidentiality. This ruling placed the Third Circuit squarely in conflict with every other Circuit that has considered this issue, all of whom had adopted the FBI's position that assurances of confidentiality are inherently implicit in all FBI interviews conducted during the course of a criminal investigation.

On 5/24/93, in a unanimous opinion delivered by Justice O'Connor (copy attached) the Court vacated the Third Circuit judgment and remanded the case, rejecting the Third Circuit's standard as too rigid. However, although the Government prevailed in this particular case, the Supreme Court refused to recognize as a legal presumption that all interviewees in criminal investigations conducted by the FBI expect that what they say to the FBI will be held in confidence, and established a test for the Government to meet its burden establishing the existence of implied assurances of confidentiality that is very difficult and quite burdensome to meet.

The FBI argued that adoption of the legal presumption (as several of the Circuit Courts had done) recognizes the practice of the FBI for more than half a century, is critical to the FBI's maintaining its ability to elicit information essential to the solution of criminal investigations, and was consistent with the Supreme Court's admonition in Reporters' Committee that agencies adopt workable rules to implement the FOIA. The Supreme Court held that "Neither the language of Exemption 7(D) nor Reporters' Committee, however, supports the proposition that the category of all criminal investigative sources is exempt." The Court's opinion emphasizes that, although the FBI's argument is quite persuasive from an administrative standpoint, the FOIA is a disclosure statute, with exemptions to be construed narrowly. "In short, the Government offers no persuasive evidence that Congress intended for the Bureau to be able to satisfy its burden in every instance simply by asserting that a source communicated with the Bureau during the course of a criminal investigation. Had Congress meant to create such a rule, it could have done so much more clearly."

The standard the Supreme Court has now established for an agency to prove the existence of an implicit assurance of confidentiality is set forth in the final paragraph of the opinion. The Government is entitled to a presumption of confidentiality if it can establish, through declarations, that the "nature of the crime investigated and the witness' relation to it support an inference of confidentiality..." This is a very subjective standard that leaves to the discretion of the district court the decision as to whether the "nature of this crime" is such that assurances of confidentiality for interviewees can be inferred.

Although the Court's opinion states that a gang-related murder investigation, such as in the instant case, is the type of investigation where assurances of confidentiality for witnesses can be inferred, it sets forth no guidelines for determining what other types of investigations do and do not qualify for permitting such an inference.

Efforts to protect information in FBI records already in existence are made much more difficult by the Landano decision. Efforts to prepare declarations in ongoing FOIA litigation that meet Landano standards will require the expenditure of more time and scarce resources by the FOIPA Section, IMD, further exacerbating an already bad situation. Furthermore, such efforts will unavoidably be at the expense of efforts to process FOIA requests, resulting in an increase in the administrative processing backlog, which in turn results in more FOIA litigation initiated by frustrated requesters. Also, LCD believes that the Landano decision will cause FOIA litigants who were unsuccessful in past lawsuits to make new FOIA requests for information denied to them in the past.

LCD will coordinate with IMD and other interested Divisions in formulating and implementing any changes in FBI administrative and investigative procedures believed to be required by Landano and will keep you apprised of developments.

J.R. Davis

August 20, 1993

Mr. William S. Sessions
3920 Argyle Terrace, N.W.
Washington, D.C. 20011

Dear Judge Sessions:

Being forwarded to you under separate cover are two cartons containing fourteen folders which you identified as containing documents you wanted. The folders are identified as follows:

1) Congressional Correspondence (General)

2) Correspondence: The Chief Justice
3) Correspondence: Business 1985
4) Correspondence: Personal 1985
5) Correspondence: Business 1986*
6) Correspondence: Business 1987
7) Correspondence: Personal 1987

8) Congratulatory Letters with Responses File #1
9) Congratulatory Letters with Responses File #2
10) Congratulatory Letters with Responses File #3
11) Federal Bureau of Investigation Congratulatory Letters (No response)

12) WSS Hospitalization (Oct '87) No Responses
13) WSS Hospitalization (Oct '87) Get Well Messages - File #1
14) WSS Hospitalization (Oct '87) Get Well Messages - File #2

*There was no folder for Correspondence: Personal 1986.

FILED 33
AUG 20 1993
FBI

Exec AD Adm. ___
Exec AD Inv. 1 - Mr. Davis
Exec AD LES 1 - [redacted]
Asst. Dir.:
Adm. Servs. 1 - Mr. Kelley
Crim. Inv. 1 - [redacted]
Ident. ___
Insp. ___ (Attention: [redacted] CDRU)
Intell. 2 - Package Copy Enclosures
Lab. ___
Legal Coun. ___
Off. Cong. & Public Affs. [redacted] (9)
Rec. Mgnt. ___
Tech. Servs. ___
Training ___
Off. Liaison & Int. Affs. ___
Telephone Rm. ___
Director's Sec'y ___ MAIL ROOM [redacted]

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[redacted]

9 [redacted]
7427

Mr. William S. Sessions

A total of eight documents have been withheld from these folders so that they may be further examined by the Document Classification and Civil Discovery Review Units. Once that review is completed you will be provided any portion of the documents not classified or otherwise privileged. Pages identifying the documents being withheld have been inserted in the folders to indicate the location of the original documents.

Sincerely yours,

Joseph R. Davis
Assistant Director - Legal Counsel

b6
b7C

APPROVED:
Director
Dep. Dir.
ADD-Adm.
ADD-Inv.
Adm. Servs.
Crim. Inv.
Crim. Jus. Info. Servs.
Ident.
Info. Mgmt.
Inspection
Intell.
Laboratory
Legal Coun.
Tech. Servs.
Training
Off. of EEO Affs.
Off. of Liaison & Int. Affs.
Off. of Public & Cong. Affs.
TOM Off.

August 16, 1993

EXPRESS MAIL

Mr. William S. Sessions
3920 Argyle Terrace, N.W.
Washington, D.C. 20011

Dear Judge Sessions:

Enclosed herewith is a folder provided to Legal Counsel by the Office of Professional Responsibility (OPR) on August 12, 1993. This folder, which was originally obtained by OPR from files maintained by staff in the Director's Office, contains copies of sixty-six of your travel vouchers (and related documents) covering the period July 27, 1987 to June 28, 1992.

Two documents from this folder have been withheld from release. Both are documents attached to vouchers and not the vouchers themselves. Both are described in documents substituted for those removed and are identified by yellow tabs. The first was removed from a voucher covering your travel from January 29, 1988 to February 12, 1988; the other was removed from a voucher covering your travel from May 31, 1992 to June 28, 1992.

We are continuing our review of those documents you identified in your examination of the files and we anticipate making an additional release of material to you very shortly.

Thank you for your patience.

Sincerely,

67-90356-23

Joseph R. Davis
Assistant Director - Legal Counsel

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b7C

Enclosure

2 - [redacted]
(1 - [redacted]
(1 - [redacted]
1 - Mr. Davis
1 - [redacted]
[redacted] (9)

1 - [redacted]
1 - Mr. Kelley
1 - [redacted]
(Attn: [redacted]

7427

Exec AD Adm. ____
Exec AD Inv. ____
Exec AD LES ____
Asst. Dir.:
Adm. Servs. ____
Crim. Inv. ____
Ident. ____
Insp. ____
Intell. ____
Lab. ____
Legal Coun. ____
Off. Cong. & Public Affs. ____
Rec. Mgmt. ____
Tech. Servs. ____
Training ____
Off. Liaison & Int. Affs. ____
Telephone Rm. ____
Director's Sec'y ____

MAIL ROOM

APPROVED:

Director ____
Dep. Dir. ____
ADD-Adm. ____
ADD-Inv. ____

Adm. Servs. ____
Crim. Inv. ____
Crim. Jus. Info. Servs. ____
Ident. ____
Info. Mgmt. ____

Inspection ____
Intell. ____
Laboratory ____
Legal Coun. ____
Tech. Servs. ____
Training ____

Off. of EEO Affs. ____
Off. of Liaison & Int. Affs. ____
Off. of Public & Cong. Affs. ____
TQM Off. ____

NOTE: On 8/12/93, SSA [redacted] OPR, Inspection Division, delivered the attached copies of former Director Sessions' travel vouchers to Deputy Assistant Director Thomas A. Kelley, Legal Counsel Division (LCD), and advised that after consultation with OPR-DOJ, it had been decided that these copies of the former Director's vouchers could be released to Judge Sessions. Copies were made of each voucher by the Civil Discovery Review Unit, LCD, and attachments to two vouchers were withheld from release. They are identified in the attached letter and described on inserts replacing them in the documents being released.

b6
b7C

O-4 (Rev. 1-9-90)
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

RECEIVED
AUG 17 2 15 PM '93

DATE:

Re:

TO: Mr. William S. Sessions
3920 Argyle Terrace, N.W.
Washington, D.C. 20011

Invoice of Contents

Description of Contents:

Letter with sixty-six travel vouchers
and related documents

FBI File# _____

Case# _____

_____

_____

Your# _____

[X] Return to [redacted] b6 b7C

Room 7427 TL _____

Ext. 5020

Shipping# _____

SHIPPING METHODS

Air Freight and Express Services

[X] Overnight

[ ] 2-Day Standard Service

[ ] Saturday Delivery

[ ] Economy (2-3 Days Service)

[ ] Deferred (4-5 Days Service)

903 6419 472

[ ] Mail Room: 1B327, TL 152

(registered mail)

[ ] FMSS - Supply Room, 1B353

(not registered)

Hazardous Materials Only

Weight of Hazardous Materials:

Packaged By _____
Signature

Date _____

All items listed above are contained in this package.

A detailed description items will be found in Bureau communication dated _____.

(SHIPPING HOURS - 9:00 A.M. TO 4:00 P.M.)

COPY

THE WHITE HOUSE

WASHINGTON

July 19, 1993

The Honorable William S. Sessions
Director
Federal Bureau of Investigation
9th and Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Director Sessions:

After a thorough review by Attorney General Reno of your leadership of the Federal Bureau of Investigation, she has reported to me that you can no longer effectively lead the Bureau and the law enforcement community and has recommended to me that you be replaced effective immediately.

In accord with the recommendation of the Attorney General, with which I fully agree, I am hereby terminating your service as Director of the Federal Bureau of Investigation, effective immediately.

Let me express my appreciation and that of the American people for your contribution as a United States District Judge and as Director of the Federal Bureau of Investigation.

Sincerely,

Bill Clinton

67 HQ-[illegible], 27

7/19/93: Orig. del. to Exec. Clerk (4:10 pm)

3 [redacted] b6 b7C

[redacted]

Office of the Deputy Attorney General

Washington, D.C. 20530

DATE: 8/2/93

TO: Tom Kelly

FBI

Fax No.: ( ) 324-5366 Telephone No.: ( ) ____-____

FROM: [redacted] b6 b7C

ODAG

Fax No.: ( ) 514-0467 Telephone No.: ( ) 514-4945

TRANSMISSION CONTAINS 2 SHEETS **INCLUDING** THIS COVER SHEET

****

SPECIAL NOTE(S):

If any page(s) are missing from this transmission, please telephone sender at the above telephone number for re-transmission.

Memorandum

Dep. Dir.
ADD Adm.
ADD Inv.
Asst. Dir.:
Adm.Servs.
Crim.Inv.
Ident.
Info.Mgnt.
Insp.
Intell.
Lab.
Legal Coun.
Tech. Servs.
Training
Cong. Affs. Off.
Off. of EEO
Off. Liaison &
Int. Affs.
Off. of Public Affs.
Telephone Rm.
Director's Office

To : Mr. Bayse [redacted] Date 8/9/93

From : M. S. Bratton [redacted]

Subject : WILLIAM S. SESSIONS
FORMER DIRECTOR

PROPERTY MATTER

PURPOSE: To report the recovery of FBI property from the former Director and from his residence. b6 b7C

RECOMMENDATION: None. For record purposes only.

APPROVED:

Director	Adm. Servs.	Inspection	Off. of EEO Affs.
Dep. Dir.	Crim. Inv.	Intell.	Off. of Liaison & Int. Affs.
ADD-Adm.	Crim. Jus. Info. Servs.	Laboratory	Off. of Public & Cong. Affs.
ADD-Inv.	Ident.	Legal Coun.	TQM Off.
	Info. Mgmt.	Tech. Servs.	
		Training	

DETAILS: On 7/26/93, Supervisory Special Agents [redacted] and [redacted] Operations Management Section, Technical Services Division, went to the residence of former Director William S. Sessions, 3920 Argyle Terrace, Washington, D. C. to recover FBI-owned telephone equipment installed at the residence.

After being greeted by Mrs. Alice Sessions, [redacted] were introduced to [redacted] of former Director Sessions) and [redacted] (retired FBI Special Agent In Charge), who has been enlisted by Mr. Sessions to oversee various transition matters. b6 b7C

SSAs [redacted] were then accompanied by [redacted] and [redacted] throughout our visit at the residence.

During the visit, the Secure Telephone [redacted], serial number [redacted] was removed from the master bedroom, along with [redacted] (no serial b7E

(7 HQ-903563-21

1 - Mr. Davis
Attn: Mr. Kelley, Room 7427
1 - [redacted], Room 7176
1 - [redacted] Room 6421
[redacted] (4) b6 b7C

Bufile: 67-0903563

[redacted]

8-0
6421

numbers), which had previously been installed by SA [redacted]. In the basement, all FBI wiring associated with the [redacted] to the FBIHO Switchboard [redacted], the [redacted] were removed and verified by [redacted] b6 b7C b7E

To ensure that all telephone facilities belonging to Mr. Sessions were in proper operating order, [redacted] and SA [redacted] verified the proper operation of each telephone set in the residence.

No FBI-owned telephone equipment was abandoned at the residence. A hand-written statement was provided by SA [redacted] to [redacted] indicating that all FBI-owned telephone equipment had been retrieved. [redacted] was also advised that disconnect orders had been placed with Bell Atlantic Telephone Company to disconnect [redacted] as well as the [redacted] b6 b7C b7E

It is noted that former Director Sessions, [redacted] and [redacted] were very cooperative during the entire visit.

For record purposes, it is noted that the following FBI-provided equipment had previously been returned to SA [redacted] by former Director Sessions through SSA [redacted] or SSA [redacted] [redacted]: b6 b7C b7E

[redacted]

The above information is being provided for record purposes.

0-93 (Rev. 01/25/91)

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

TRANSMIT VIA:
[X] Teletype

PRECEDENCE:
[X] Immediate
[ ] Priority
[ ] Routine

CLASSIFICATION:
[ ] TOP SECRET
[ ] SECRET
[ ] CONFIDENTIAL
[X] UNCLAS ~~E F T O~~
[ ] UNCLAS

DATE: 7/19/93

^PAGE 1 OF 2

FM DIRECTOR FBI

TO ALL FBI FIELD OFFICES

ALL LEGATS

BT

UNCLAS ~~E F T O~~

CITE: //0010//

PASS: ALL SACS AND ALL LEGATS.

SUBJECT: DEPARTURE OF FORMER DIRECTOR WILLIAM S. SESSIONS.

THIS AFTERNOON AT 3:59 P.M. EASTERN STANDARD TIME, I WAS INFORMED BY PRESIDENT CLINTON THAT I WAS TO BE REPLACED AS DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION IN ACCORDANCE WITH THE RECOMMENDATION OF THE ATTORNEY GENERAL, WITH WHICH HE AGREED.

HE CALLED A SECOND TIME TO INFORM ME THAT MY TERMINATION WAS TO BE EFFECTIVE IMMEDIATELY. AT 4:03 P.M., DEPUTY ATTORNEY

62-109563-20

****** FOR COMM CENTER USE ONLY ******

NOTE: Copy Designations Are On The Last Page Of This Teletype!!!

Approved By _____

MRI/JUL 1615/200

Transmitted 2306

ISN 162

GENERAL HEYMANN DELIVERED TO MR. CLARKE THE LETTER FROM ATTORNEY GENERAL RENO APPOINTING HIM AS THE ACTING DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION.

DURING THE NEXT FEW DAYS, I WILL BE WRITING TO THANK ALL OF OUR FBI FAMILY FOR THE SUPPORT THEY HAVE GIVEN THE DIRECTOR OVER THE PAST 5 1/2 YEARS AND OF THE TREMENDOUS PRIDE I HAVE IN OUR SPLENDID FBI FAMILY WHICH IS TRULY THE PREMIER LAW ENFORCEMENT AGENCY IN THE WORLD.

BT////

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

Drafted By: WSS [redacted] Room/TL #: 7176 Phone No: 3444

b6
b7C

COPY DESIGNATIONS:

1 - MR. CLARKE

1 - MR. GOW

1 - MR. KENNEDY

1 - EACH ASSISTANT DIRECTOR

distributed 7/20/92

August 5, 1993

Mr. William S. Sessions
3920 Argyle Terrace, N.W.
Washington, D.C. 20011

Dear Judge Sessions:

RE: Letter from Attorney [redacted] b6 b7C

This will confirm our conversation on Monday, August 2, 1993, with regard to the letter you received from defense attorney [redacted] concerning the Atlanta Banca Nazionale del Lavoro (BNL) prosecution.

In our discussion Monday, I advised you that I had consulted with the lead Department of Justice attorney in the BNL prosecution, Mr. John Hogan. Mr. Hogan also serves as a Special Assistant to Attorney General Reno. Mr. Hogan and I are both of the view that:

(1) Neither the FBI nor DOJ should suggest to you that you may not respond to [redacted] request for an interview. b6 b7C

(2) If you did decide to discuss this matter with [redacted] the Department would need to give you specific instructions regarding certain limitations on the areas you would be authorized to discuss. This is consistent with the manner in which we handle requests for production or disclosure of information by employees or former employees of the Department, as set forth in Title 28, Code of Federal Regulations, Sections 16.21, et seq. We also discussed the possibility of your agreeing to the interview with a Government attorney present if you thought that would be useful.

At the conclusion of our discussion you advised that you had decided you would not agree to discuss this matter with [redacted] but rather would write a letter to him. You indicated that in the letter you would simply state that the

Exec AD Adm. ____
Exec AD Inv. ____
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Asst. Dir.:
Adm. Servs. ____
Crim. Inv. ____
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Legal Coun. ____
Off. Cong. & Public Affs. ____
Rec. Mgmt. ____
Tech. Servs. ____
Training ____
Off. Liaison & Int. Affs. ____
Telephone Rm. ____
Director's Sec'y ____
MAIL ROOM ☐

1 - Mr. Clarke
1 - Mr. Gow
1 - Mr. Potts
JRD [redacted] (8)
1 - Mr. Davis
1 - Mr. Collingwood

b6 b7C

DM - Hand-delivered to [redacted] at his residence on 8/5/93 by SSA [redacted]

factual recitation in his letter of your earlier remarks was essentially correct, with the exception of the fact that it was former Attorney General Barr, not former Attorney General Thornburg, with whom you spoke regarding the BNL matter.

I also asked you to advise me if you receive further requests for information or a subpoena from [redacted] and you indicated you would do so promptly. b6 b7C

Thank you for advising me of this situation. Please let me know if you need further guidance or assistance in this matter.

Sincerely yours,

Joseph R. Davis
Assistant Director - Legal Counsel

1 - Mr. John Hogan
Special Assistant
Office of the Attorney General
Department of Justice

July 30, 1993

Mr. William S. Sessions
3920 Argyle Terrace, Northwest
Washington, D.C. 20011

Dear Judge Sessions:

During our recent conversations you requested that I provide you with copies of pertinent statutes, regulations, and summaries of the post-employment and non-disclosure restrictions applicable to you. Attached in notebook form are the primary and most current authorities addressing your request.

Title 18, United States Code (U.S.C.), Section 207 contains several post-employment restrictions. See Tab A. The three restrictions most applicable to you are set forth at Sections 207(a)(1), 207(a)(2) and 207(c).

Section 207(a)(1) restricts you from representing another in dealing with the Government in connection with a particular matter in which you were personally and substantially involved during your Government employment. This restriction has no time limitation.

Section 207(a)(2) restricts you from representing another in dealing with the Government in connection with a matter in which you did not personally and substantially participate, but which you knew or should reasonably have known was pending under your official responsibility during the last year of your Government service. This restriction lasts for two years after terminating Government service.

Because you are a former presidential appointee, I call your attention to the restrictions of Section 207(c). Section 207(c) restricts a former senior employee from representing another in any matter before his/her former agency for one year after termination of Government service. The definition of senior employee includes officials whose rate of basic pay is equal to or greater than Level V of the Executive Schedule. [redacted] you were paid at Level II of the Executive Schedule the restrictions of Section 207(c) apply to you.

b6
b7C

Dep. Dir. ____
ADD Adm. ____
ADD Inv. ____
Asst. Dir.:
Adm. Servs. ____
Crim. Inv. ____
Ident. ____
Insp. ____
Intell. ____
Lab. ____
Legal Coun. ____
Rec. Mgmt. ____
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Training ____
Cong. Affs. Off. ____
Off. of EEO ____
Off. Liaison & Int. Affs. ____
Off. of Public Affs. ____
Telephone Rm. ____
Director's Sec'y ____ MAIL ROOM ☐

1 - Mr. Davis
1 - Mr. Kelley
1 - Mr. Moschella
1 - [redacted]
(8)

1 - ENCLOSURE
1 - [redacted]
1 - ALU Library
1 - ALU Pickler

APPROVED:

Director ____ Adm. Servs. ____ Inspection ____ Off. of EEO Affs. ____
Dep. Dir. ____ Crim. Inv. ____ Intell. ____ Off. of Liaison & Int. Affs. ____
ADD-Adm. ____ Crim. Jus. Info. Servs. ____ Laboratory ____ Off. of Public & Cong. Affs. ____
ADD-Inv. ____ Ident. ____ Legal Coun. ____ TQM Off. ____
Info. Mgmt. ____ Tech. Servs. ____
Training ____

The definition of agency as used in Section 207 is very broad. However, by regulation the Federal Bureau of Investigation (FBI) has been designated a separate component of the Department of Justice (DOJ). See 57 Fed. Reg. 3115-3117 (Tab E). Therefore, the above restrictions only prohibit you from representing others before the FBI. You may represent third parties before other DOJ components or Government agencies if otherwise permitted by Sections 207(a)(1) and 207(a)(2).

As you may recall, President Clinton issued Executive Order 12834 (1/20/93) which imposed additional ethical and post-employment restrictions upon presidential appointees who take office under his administration. These additional restrictions do not apply to you and have not been included in the attached notebook.

Restrictions and obligations concerning the disclosure of classified and non-public information are set forth at Tabs H - I. The unauthorized dissemination of classified information is punishable under Title 18, U.S.C., Section 798. See Tabs H - J. All other official information obtained during the course of your FBI employment is governed by regulation and subject to prepublication review by the FBI. See Tabs K - O.

We have tried to be as complete as possible in our review and I am confident that the major restrictions have been included within the attached notebook. However, please do not assume that you are only obligated to comply with the restrictions that have been brought to your attention. Depending upon the particular facts of individual situations additional restrictions may be applicable.

If you have questions with respect to your ethical obligations or the post-employment restrictions as they pertain to a fact specific situation, you are entitled by Title 5, Code of Federal Regulations, Section 2638.502(b)(4) to request a formal opinion from us. Pursuant to Title 5, C.F.R., Section 2638.309(b) any person who relies upon and acts in good faith in accordance with the formal opinion, shall not be subject to prosecution under 18 U.S.C. 202-209 or related civil actions. You may of course consult with outside counsel as well.

Sincerely yours,

Joseph R. Davis
Assistant Director - Legal Counsel

Enclosure

Ö-4 (Rev. 1-9-90)
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

RECEIVED
JUL 30 2 05 PM '93

DATE: 7/30/93 Re:

TO: Mr. William S. Sessions
3920 Argyle Terrace, Northwest
Washington, D.C. 20011

Invoice of Contents

Description of Contents:

Letter & binder re post-employment and non-disclosure restrictions

FBI File# _____

Case# _____

_____

_____

Your# _____

☒ Return to J.R. Davis

Room 7427 TL _____

Ext. 5018

Shipping# _____

SHIPPING METHODS

Air Freight and Express Services

☒ Overnight

☐ 2-Day Standard Service

☒ Saturday Delivery 90 : 6409 742

☐ Economy (2-3 Days Service)

☐ Deferred (4-5 Days Service)

☐ Mail Room: 1B327, TL 152

(registered mail)

☐ FMSS - Supply Room, 1B353

(not registered)

Hazardous Materials Only

Weight of Hazardous Materials:

Packaged By _____
Signature

Date _____

All items listed above are contained in this package.

A detailed description items will be found in Bureau communication dated _____.

(SHIPPING HOURS - 9:00 A.M. TO 4:00 P.M.)

The following materials set forth the post-employment restrictions on Government employees and an employee's obligation to protect classified and non-public information obtained during the course of their Federal employment upon separation from the FBI:

POST EMPLOYMENT RESTRICTIONS

1. Title 18, United States Code (U.S.C.), Section 207, entitled "Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches ..... Tab A

2. 6/11/92 memorandum to All Special Agents in Charge, entitled "Ethics Reform Act of 1989, Post-Employment Restrictions"..... Tab B

3. 11/5/92 memorandum for Designated Agency Ethics Officials, General Counsels, Inspectors General from Stephen D. Potts, Director, Office of Government Ethics (OGE), entitled "Revised Materials Relating to 18, U.S.C., Section 207"..... Tab C

4. 10/26/90 memorandum to Designated Agency Ethics Officials, General Counsels and Inspectors General from Stephen D. Potts, Director, OGE, entitled "Revised Post-Employment Restrictions of 18 U.S.C. § 207"..... Tab D

5. 57 Fed. Reg. 3115-3117 (1/28/92) issued by the OGE, entitled "Post-Employment Conflict of Interest; Exemption of Positions and Designation of Additional Agency Components for the Executive Branch"..... Tab E

6. 57 Fed. Reg. 62467 62468 (12/31/92) issued by the OGE, entitled "Post Employment Conflict of Interest Restrictions; Amendments"..... Tab F

7. Title 5, Code of Federal Regulations (C.F.R.), Part 2637, entitled "Regulations Concerning Post Employment Conflict of Interest," for use as guidance until OGE issues new regulations. The attached regulations apply only to employees who left Government service prior to 1/1/91..... Tab G

(7-HQ 90356 18

ENCLOSURE

PROTECTION OF CLASSIFIED AND NON-PUBLIC INFORMATION

8. Title 18, U.S.C., Section 798, entitled "Disclosure of Classified Information"..... Tab H

9. SF-312, entitled "Classified Information Nondisclosure Agreement"..... Tab I

10. Title 32, C.F.R., Section 2003.20 et seq., entitled "Classified Information Nondisclosure Agreement: SF 312; Classified Information Nondisclosure Agreement: SF 189; Classified Information Nondisclosure Agreement (Industrial/Non-Government): SF 189-A"..... Tab J

11. Manual of Administrative Operations and Procedures (MAOP), Part I, Section 1-24, entitled "Prepublication Review Matters" ..... Tab K

12. Title 28, C.F.R., Section 17.144, entitled "Employees" ..... Tab L

13. 7/23/90 Memorandum to All Special Agents in Charge, entitled "Security Awareness Training for All FBI Employees"..... Tab M

14. MAOP, Part I, Section 1-3.6, entitled "Copies of Official Correspondence and Documents"..... Tab N

15. Title 28, C.F.R., Section 16.21 et seq., entitled "Production or Disclosure in Federal and State Proceedings"..... Tab O

A

employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or

(2) in those matters which are the subject of his official responsibility,

subject to approval by the Government official responsible for appointment to his position.

(f) Nothing in subsection (a) or (b) prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States if the head of the department or agency concerned with the grant or contract certifies in writing that the national interest so requires and publishes such certification in the Federal Register.

(g) Nothing in this section prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(h) For the purpose of this section, the term "covered matter" means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter.

(Added Pub.L. 87–849, § 1(a), Oct. 23, 1962, 76 Stat. 1122, and amended Pub.L. 101–194, Title IV, § 404, Nov. 30, 1989, 103 Stat. 1750; Pub.L. 101–280, § 5(c), May 4, 1990, 104 Stat. 159.)

EDITORIAL NOTES

Prior Provisions. A prior section 205, Act June 25, 1948, c. 645, 62 Stat. 692, which related to the acceptance by a Member of Congress of anything of value to influence him, was eliminated in the general amendment of this chapter by Pub.L. 87–849 and is substantially covered by revised section 201.

Provisions similar to those comprising this section were contained in section 283 of this title prior to Pub.L. 87–849.

Effective Date of 1990 Amendment. Amendment by Pub.L. 101–280 effective on May 4, 1990, see section 11 of Pub.L. 101–280, set out as a note under section 101 of Appendix 6 to Title 5, Government Organization and Employees.

§ 206. Exemption of retired officers of the uniformed services

Sections 203 and 205 of this title shall not apply to a retired officer of the uniformed services of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress.

(Added Pub.L. 87–849, § 1(a), Oct. 23, 1962, 76 Stat. 1123.)

EDITORIAL NOTES

Prior Provisions. A prior section 206, Act June 25, 1948, c. 645, 62 Stat. 692, which related to an offer to a judge or judicial officer to influence him, was eliminated in the general amendment of this chapter by Pub.L. 87–849 and is substantially covered by revised section 201.

§ 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches

(a) Restrictions on all officers and employees of the executive branch and certain other agencies.—

(1) Permanent restrictions on representation on particular matters.—Any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including any independent agency of the United States), or of the District of Columbia, and who, after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia) in connection with a particular matter—

(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) in which the person participated personally and substantially as such officer or employee, and

(C) which involved a specific party or specific parties at the time of such participation,

shall be punished as provided in section 216 of this title.

(2) Two-year restrictions concerning particular matters under official responsibility.—Any person subject to the restrictions contained in paragraph (1) who, within 2 years after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia), in connection with a particular matter—

(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) which such person knows or reasonably should know was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States or the District of Columbia, and

(C) which involved a specific party or specific parties at the time it was so pending,

shall be punished as provided in section 216 of this title.

(3) **Clarification of restrictions.**—The restrictions contained in paragraphs (1) and (2) shall apply—

(A) in the case of an officer or employee of the executive branch of the United States (including any independent agency), only with respect to communications to or appearances before any officer or employee of any department, agency, court, or court-martial of the United States on behalf of any other person (except the United States), and only with respect to a matter in which the United States is a party or has a direct and substantial interest; and

(B) in the case of an officer or employee of the District of Columbia, only with respect to communications to or appearances before any officer or employee of any department, agency, or court of the District of Columbia on behalf of any other person (except the District of Columbia), and only with respect to a matter in which the District of Columbia is a party or has a direct and substantial interest.

(b) One-year restrictions on aiding or advising.—

(1) **In general.**—Any person who is a former officer or employee of the executive branch of the United States (including any independent agency) and is subject to the restrictions contained in subsection (a)(1), or any person who is a former officer or employee of the legislative branch or a former Member of Congress, who personally and substantially participated in any ongoing trade or treaty negotiation on behalf of the United States within the 1-year period preceding the date on which his or her service or employment with the United States terminated, and who had access to information concerning such trade or treaty negotiation which is exempt from disclosure under section 552 of title 5, which is so designated by the appropriate department or agency, and which the person knew or should have known was so designated, shall not, on the basis of that information, knowingly represent, aid, or advise any other person (except the United States) concerning such ongoing trade or treaty negotiation for a period of 1 year after his or her service or employment with the United States terminates. Any person who violates this subsection shall be punished as provided in section 216 of this title.

(2) **Definition.**—For purposes of this paragraph—

(A) the term "trade negotiation" means negotiations which the President determines to undertake to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made; and

(B) the term "treaty" means an international agreement made by the President that requires the advice and consent of the Senate.

(c) One-year restrictions on certain senior personnel of the executive branch and independent agencies.—

(1) **Restrictions.**—In addition to the restrictions set forth in subsections (a) and (b), any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including an independent agency), who is referred to in paragraph (2), and who, within 1 year after the termination of his or her service or employment as such officer or employee, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency, shall be punished as provided in section 216 of this title.

(2) **Persons to whom restrictions apply.**—(A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (d))—

(i) employed at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5,

(ii) employed in a position which is not referred to in clause (i) and for which the basic rate of pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the rate of basic pay payable for level V of the Executive Schedule,

(iii) appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the

Vice President to a position under section 106(a)(1)(B) of title 3, or

(iv) employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade O–7 or above.

(B) Paragraph (1) shall not apply to a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates.

(C) At the request of a department or agency, the Director of the Office of Government Ethics may waive the restrictions contained in paragraph (1) with respect to any position, or category of positions, referred to in clause (ii) or (iv) of subparagraph (A), in such department or agency if the Director determines that—

(i) the imposition of the restrictions with respect to such position or positions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions, and

(ii) granting the waiver would not create the potential for use of undue influence or unfair advantage.

(d) Restrictions on very senior personnel of the executive branch and independent agencies.—

(1) Restrictions.—In addition to the restrictions set forth in subsections (a) and (b), any person who—

(A) serves in the position of Vice President of the United States,

(B) is employed in a position in the executive branch of the United States (including any independent agency) at a rate of pay payable for level I of the Executive Schedule or employed in a position in the Executive Office of the President at a rate of pay payable for level II of the Executive Schedule, or

(C) is appointed by the President to a position under section 105(a)(2)(A) of title 3 or by the Vice President to a position under section 106(a)(1)(A) of title 3,

and who, within 1 year after the termination of that person's service in that position, knowingly makes, with the intent to influence, any communication to or appearance before any person described in paragraph (2), on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of the executive branch of the United States, shall be punished as provided in section 216 of this title.

(2) Persons who may not be contacted.—The persons referred to in paragraph (1) with respect to appearances or communications by a person in a position described in subparagraph (A), (B), or (C) of paragraph (1) are—

(A) any officer or employee of any department or agency in which such person served in such position within a period of 1 year before such person's service or employment with the United States Government terminated, and

(B) any person appointed to a position in the executive branch which is listed in sections 5312, 5313, 5314, 5315, or 5316 of title 5.

(e) Restrictions on Members of Congress and officers and employees of the legislative branch.—

(1) Members of Congress and elected officers.—(A) Any person who is a Member of Congress or an elected officer of either House of Congress and who, within 1 year after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B) or (C), on behalf of any other person (except the United States) in connection with any matter on which such former Member of Congress or elected officer seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former Member of Congress are any Member, officer, or employee of either House of Congress, and any employee of any other legislative office of the Congress.

(C) The persons referred to in subparagraph (A) with respect to appearances or communications by a former elected officer are any Member, officer, or employee of the House of Congress in which the elected officer served.

(2) Personal staff.—(A) Any person who is an employee of a Senator or an employee of a Member of the House of Representatives and who, within 1 year after the termination of that employment, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communica-

tions by a person who is a former employee are the following:

(i) the Senator or Member of the House of Representatives for whom that person was an employee; and

(ii) any employee of that Senator or Member of the House of Representatives.

(3) **Committee staff.**—Any person who is an employee of a committee of Congress and who, within 1 year after the termination of that person's employment on such committee, knowingly makes, with the intent to influence, any communication to or appearance before any person who is a Member or an employee of that committee or who was a Member of the committee in the year immediately prior to the termination of such person's employment by the committee, on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(4) **Leadership staff.**—(A) Any person who is an employee on the leadership staff of the House of Representatives or an employee on the leadership staff of the Senate and who, within 1 year after the termination of that person's employment on such staff, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the following:

(i) in the case of a former employee on the leadership staff of the House of Representatives, those persons are any Member of the leadership of the House of Representatives and any employee on the leadership staff of the House of Representatives; and

(ii) in the case of a former employee on the leadership staff of the Senate, those persons are any Member of the leadership of the Senate and any employee on the leadership staff of the Senate.

(5) **Other legislative offices.**—(A) Any person who is an employee of any other legislative office of the Congress and who, within 1 year after the termination of that person's employment in such office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by any officer or employee of such office, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the employees and officers of the former legislative office of the Congress of the former employee.

(6) **Limitation on restrictions.**—(A) The restrictions contained in paragraphs (2), (3), and (4) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was paid a rate of basic pay equal to or greater than an amount which is 75 percent of the basic rate of pay payable for a Member of the House of Congress in which such employee was employed.

(B) The restrictions contained in paragraph (5) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was employed in a position for which the rate of basic pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the basic rate of pay payable for level V of the Executive Schedule.

(7) **Definitions.**—As used in this subsection—

(A) the term "committee of Congress" includes standing committees, joint committees, and select committees;

(B) a person is an employee of a House of Congress if that person is an employee of the Senate or an employee of the House of Representatives;

(C) the term "employee of the House of Representatives" means an employee of a Member of the House of Representatives, an employee of a committee of the House of Representatives, an employee of a joint committee of the Congress whose pay is disbursed by the Clerk of the House of Representatives, and an employee on the leadership staff of the House of Representatives;

(D) the term "employee of the Senate" means an employee of a Senator, an employee of a committee of the Senate, an employee of a

joint committee of the Congress whose pay is disbursed by the Secretary of the Senate, and an employee on the leadership staff of the Senate;

(E) a person is an employee of a Member of the House of Representatives if that person is an employee of a Member of the House of Representatives under the clerk hire allowance;

(F) a person is an employee of a Senator if that person is an employee in a position in the office of a Senator;

(G) the term "employee of any other legislative office of the Congress" means an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the Copyright Royalty Tribunal, the United States Capitol Police, and any other agency, entity, or office in the legislative branch not covered by paragraph (1), (2), (3), or (4) of this subsection;

(H) the term "employee on the leadership staff of the House of Representatives" means an employee of the office of a Member of the leadership of the House of Representatives described in subparagraph (L), and any elected minority employee of the House of Representatives;

(I) the term "employee on the leadership staff of the Senate" means an employee of the office of a Member of the leadership of the Senate described in subparagraph (M);

(J) the term "Member of Congress" means a Senator or a Member of the House of Representatives;

(K) the term "Member of the House of Representatives" means a Representative in, or a Delegate or Resident Commissioner to, the Congress;

(L) the term "Member of the leadership of the House of Representatives" means the Speaker, majority leader, minority leader, majority whip, minority whip, chief deputy majority whip, chief deputy minority whip, chairman of the Democratic Steering Committee, chairman and vice chairman of the Democratic Caucus, chairman, vice chairman, and secretary of the Republican Conference, chairman of the Republican Research Committee, and chairman of the Republican Policy Committee, of the House of Representatives (or any similar position created on or after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989);

(M) the term "Member of the leadership of the Senate" means the Vice President, and the President pro tempore, Deputy President pro tempore, majority leader, minority leader, majority whip, minority whip, chairman and secretary of the Conference of the Majority, chairman and secretary of the Conference of the Minority, chairman and co-chairman of the Majority Policy Committee, and chairman of the Minority Policy Committee, of the Senate (or any similar position created on or after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989).

(f) Restrictions relating to foreign entities.—

(1) Restrictions.—Any person who is subject to the restrictions contained in subsection (c), (d), or (e) and who knowingly, within 1 year after leaving the position, office, or employment referred to in such subsection—

(A) represents a foreign entity before any officer or employee of any department or agency of the United States with the intent to influence a decision of such officer or employee in carrying out his or her official duties, or

(B) aids or advises a foreign entity with the intent to influence a decision of any officer or employee of any department or agency of the United States, in carrying out his or her official duties,

shall be punished as provided in section 216 of this title.

(2) Special Rule for Trade Representative.— With respect to a person who is the United States Trade Representative, the restrictions described in paragraph (1) shall apply to representing, aiding, or advising foreign entities within 3 years after the termination of that person's service as the United States Trade Representative.

(3) Definition.—For purposes of this subsection, the term "foreign entity" means the government of a foreign country as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended, or a foreign political party as defined in section 1(f) of that Act.

(g) Special rules for detailees.—For purposes of this section, a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies, or such entities.

(h) Designations of separate statutory agencies and bureaus.—

(1) Designations.—For purposes of subsection (c) and except as provided in paragraph (2), when-

ever the Director of the Office of Government Ethics determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and that there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate department or agency. On an annual basis the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his or her responsibilities under this paragraph.

(2) **Inapplicability of designations.**—No agency or bureau within the Executive Office of the President may be designated under paragraph (1) as a separate department or agency. No designation under paragraph (1) shall apply to persons referred to in subsection (c)(2)(A)(i) or (iii).

(i) **Definitions.**—For purposes of this section—

(1) the term "officer or employee", when used to describe the person to whom a communication is made or before whom an appearance is made, with the intent to influence, shall include—

(A) in subsections (a), (c), and (d), the President and the Vice President; and

(B) in subsection (f), the President, the Vice President, and Members of Congress;

(2) the term "participated" means an action taken as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action; and

(3) the term "particular matter" includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.

(j) **Exceptions.**—

(1) **Official government duties.**—The restrictions contained in this section shall not apply to acts done in carrying out official duties on behalf of the United States or the District of Columbia or as an elected official of a State or local government.

(2) **State and local governments and institutions, hospitals, and organizations.**—The restrictions contained in subsections (c), (d), and (e) shall not apply to acts done in carrying out official duties as an employee of—

(A) an agency or instrumentality of a State or local government if the appearance, communication, or representation is on behalf of such government, or

(B) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986, if the appearance, communication, or representation is on behalf of such institution, hospital, or organization.

(3) **International Organizations.**—The restrictions contained in this section shall not apply to an appearance or communication on behalf of, or advice or aid to, an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interests of the United States.

(4) **Special knowledge.**—The restrictions contained in subsections (c), (d), and (e) shall not prevent an individual from making or providing a statement, which is based on the individual's own special knowledge in the particular area that is the subject of the statement, if no compensation is thereby received.

(5) **Exception for scientific or technological information.**—The restrictions contained in subsections (a), (c), and (d) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information, if such communications are made under procedures acceptable to the department or agency concerned or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee. For purposes of this paragraph, the term "officer or employee" includes the Vice President.

(6) **Exception for testimony.**—Nothing in this section shall prevent an individual from giving testimony under oath, or from making statements required to be made under penalty of

perjury. Notwithstanding the preceding sentence—

(A) a former officer or employee of the executive branch of the United States (including any independent agency) who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter; and

(B) a former officer or employee of the District of Columbia who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the District of Columbia) in that matter.

(k)(1)(A) The President may grant a waiver of a restriction imposed by this section to any officer or employee described in paragraph (2) if the President determines and certifies in writing that it is in the public interest to grant the waiver and that the services of the officer or employee are critically needed for the benefit of the Federal Government. Not more than 25 officers and employees currently employed by the Federal Government at any one time may have been granted waivers under this paragraph.

(B)(i) A waiver granted under this paragraph to any person shall apply only with respect to activities engaged in by that person after that person's Federal Government employment is terminated and only to that person's employment at a Government-owned, contractor operated entity with which the person served as an officer or employee immediately before the person's Federal Government employment began.

(ii) Notwithstanding clause (i), a waiver granted under this paragraph to any person who was an officer or employee of Lawrence Livermore National Laboratory, Los Alamos National Laboratory, or Sandia National Laboratory immediately before the person's Federal Government employment began shall apply to that person's employment by any such national laboratory after the person's employment by the Federal Government is terminated.

(2) Waivers under paragraph (1) may be granted only to civilian officers and employees of the executive branch, other than officers and employees in the Executive Office of the President.

(3) A certification under paragraph (1) shall take effect upon its publication in the Federal Register and shall identify—

(A) the officer or employee covered by the waiver by name and by position, and

(B) the reasons for granting the waiver.

A copy of the certification shall also be provided to the Director of the Office of Government Ethics.

(4) The President may not delegate the authority provided by this subsection.

(5)(A) Each person granted a waiver under this subsection shall prepare reports, in accordance with subparagraph (B), stating whether the person has engaged in activities otherwise prohibited by this section for each six-month period described in subparagraph (B), and if so, what those activities were.

(B) A report under subparagraph (A) shall cover each six-month period beginning on the date of the termination of the person's Federal Government employment (with respect to which the waiver under this subsection was granted) and ending two years after that date. Such report shall be filed with the President and the Director of the Office of Government Ethics not later than 60 days after the end of the six-month period covered by the report. All reports filed with the Director under this paragraph shall be made available for public inspection and copying.

(C) If a person fails to file any report in accordance with subparagraphs (A) and (B), the President shall revoke the waiver and shall notify the person of the revocation. The revocation shall take effect upon the person's receipt of the notification and shall remain in effect until the report is filed.

(D) Any person who is granted a waiver under this subsection shall be ineligible for appointment in the civil service unless all reports required of such person by subparagraphs (A) and (B) have been filed.

(E) As used in this subsection, the term "civil service" has the meaning given that term in section 2101 of title 5.

(Added Pub.L. 87–849, § 1(a), Oct. 23, 1962, 76 Stat. 1123, and amended Pub.L. 95–521, Title V, § 501(a), Oct. 26, 1978, 92 Stat. 1864; Pub.L. 96–28, §§ 1, 2, June 22, 1979, 93 Stat. 76; Pub.L. 101–189, Div. A, Title VIII, § 814(d)(2), Nov. 30, 1989, 103 Stat. 1499, Pub.L. 101–194, Title I, § 101(a), Nov. 30, 1989, 103 Stat. 1716; Pub.L. 101–280, §§ 2(a), 5(d), May 4, 1990, 104 Stat. 149–152, 159; Pub.L. 101–509, Title V, § 529 [Title I, § 101(b)(8)(A)], Nov. 5, 1990, 104 Stat. 1440; Pub.L. 102–25, Title VII, § 705(a), Apr. 6, 1991, 105 Stat. 120; Pub.L. 102–190, Div. B, Title XXXI, § 3138(a), Dec. 5, 1991, 105 Stat. 1579; Pub.L. 102–395, Title VI, § 609(a), Oct. 6, 1992, 106 Stat. 1873.)

EDITORIAL NOTES

Prior Provisions. A prior section 207, Act June 25, 1948, c. 645, 62 Stat. 692, which related to the acceptance of a bribe by a judge, was eliminated by the general amendment of this chapter by Pub.L. 87–849 and is substantially covered by revised section 201.

Provisions similar to those comprising this section were contained in section 284 of this title prior to Pub.L. 87–849.

Effective Date of 1992 Amendment. Section 609(b) of Pub.L. 102–395 provided that: "This section [amending subsec. (f) of this section] shall not apply to the person serving as the United States Trade Representative at the date of enactment of this Act [Oct. 6, 1992]."

Effective Date of 1991 Amendments. Section 3138(b) of Pub.L. 102–190 provided that: "The amendments made by subsection (a) [amending subsec. (k)(1)(B) of this section] shall take effect on the date of the enactment of this Act [Dec. 5, 1991] and shall apply to persons granted waivers under section 207(k)(1) of title 18, United States Code [subsec. (k) of this section], on or after that date."

Section 705(a) of Pub.L. 102–25 provided in part that subsec. (k) [reinstatement of subsec. (k) added by Pub.L. 101–189, § 814(d)(2) and omitted in revision of section by Pub.L. 101–194, § 101(a)] be effective Jan. 1, 1991.

Effective Date of 1990 Amendments. Pub.L. 101–509, § 529 [Title I, § 101(b)(8)(B)], provided that: "The amendments made by subparagraph (A) [amending subsecs. (c)(2)(A)(ii) and (e)(6) of this section] take effect on January 1, 1991."

Amendment by section 2(a) of Pub.L. 101–280 effective May 4, 1990, but to be executed to this section as this section had been amended in 1989 by section 101 of Pub.L. 101–194. Since the 1989 amendment by section 101 of Pub.L. 101–194 is effective Jan. 1, 1991, pursuant to section 102 of Pub.L. 101–194, the amendments under section 2(a) of Pub.L. 101–280 will be effective Jan. 1, 1991.

Amendment by section 5(d) of Pub.L. 101–280 effective May 4, 1990, see section 11 of Pub.L. 101–280, set out as a note under section 101 of Appendix 6 to Title 5, Government Organization and Employees.

Effective Date of 1989 Amendment. Section 102 of Pub.L. 101–194, as amended Pub.L. 101–280, § 2(b), May 4, 1990, 104 Stat. 152, provided that:

"(a) **In general.**—(1) Subject to paragraph (2) and to subsection (b), the amendments made by section 101 [amending this section] take effect on January 1, 1991.

"(2) Subject to subsection (b), the amendments made by section 101 [amending this section] take effect at noon on January 3, 1991, with respect to Members of Congress (within the meaning of section 207 of title 18, United States Code).

"(b) **Effect on Employment.**—(1) The amendments made by section 101 [amending this section] apply only to persons whose service as a Member of Congress, the Vice President, or an officer or employee to which such amendments apply terminates on or after the effective date of such amendments.

"(2) With respect to service as an officer or employee which terminates before the effective date set forth in subsection (a), section 207 of title 18, United States Code [this section] as in effect at the time of the termination of such service, shall continue to apply, on and after such effective date with respect to such service."

Applicability of 1978 Amendment. Section 502 of Pub.L. 95–521 provided that the amendments made to this section by section 501 shall not apply to those individuals who left Government service prior to the effective date of such amendments [July 1, 1979] or, in the case of individuals who occupied positions designated pursuant to section 207(d) of title 18, United States Code [subsec. (d) of this section], prior to the effective date of such designation; except that any such individual who returns to Government service on or after the effective date of such amendments or designation shall be thereafter covered by such amendments or designation. See, now, section 502 of Appendix 7, set out in Title 5, Government Organization and Employees.

§ 208. Acts affecting a personal financial interest

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be subject to the penalties set forth section 216 of this title.

(b) Subsection (a) shall not apply—

(1) if the officer or employee first advises the Government official responsible for appointment to his or her position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee;

B

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

June 11, 1992

MEMORANDUM TO ALL SPECIAL AGENTS IN CHARGE

RE: ETHICS REFORM ACT OF 1989, POST-EMPLOYMENT RESTRICTIONS

Since 1980, Title 5, Code of Federal Regulations (CFR), Part 2637, has provided guidance concerning the post-employment conflict of interest restrictions of Title 18, United States Code (USC), Section 207. As a result of amendments to Title 18, USC, Section 207, effective January 1, 1991, and implementation regulations for Section 207(c), Executive Branch employees terminating Government service on or after that date are subject to substantially revised post-employment restrictions. These restrictions do not bar FBI employees from accepting employment with any private or public employer after leaving Federal service. However, they do prohibit all employees from engaging in certain activities on behalf of agencies or persons which may reasonably give the appearance of making unfair use of prior Government employment and affiliations.

Restrictions imposed by Section 207 range from lifetime to one or two years in duration depending upon the employee's position and level of involvement in an activity. The most common restrictions which impact upon the majority of FBI employees are those under Section 207(a) (1), (2), and Section 207(c).

Section 207(a) (1) restricts former employees from representing an outside organization in dealing with the Government in connection with a matter in which they were involved during their Government employment. This is a lifetime restriction that begins upon termination from Government service and lasts as long as the particular matter does. The purpose of this restriction is to ensure public officials do not "switch sides," thereby undermining confidence in the fairness of proceedings and creating the impression that personal influence,

gained by Government affiliation, is being used for private ends. In applying this restriction, a particular matter would be any situation which involves the same basic facts, issues, and the same or related parties.

• For example: Joe, while employed with the FBI, was involved with the awarding of a contract to the ABC Company. Joe helped to evaluate the proposals from the competing concerns, and ABC was selected as a result of this evaluation. Once Joe leaves the FBI, he **may work** for ABC but **cannot represent** it in dealing with the Government in connection with the contract which he was involved in awarding. He can, however, work on other contracts of the company. As Joe helped to evaluate the proposals and participated in the selection of ABC, he participated personally and substantially in the matter, thus triggering the lifetime restriction.

Section 207(a) (2) restricts former employees from involvement on behalf of another person/organization in matters before the Government for which they had knowledge or should reasonably have known was pending under their official responsibility during the last year of their Government service. This restriction is in effect for <u>two years</u> after terminating Government employment. Under this restriction, official responsibility would include the supervision of a **subordinate** employee who was personally and substantially involved in the matter although the former employee was not. The two-year period is invoked as a "cooling off" period during which former employees cannot unduly influence former subordinates in their official actions.

• For example: SAC Smith is responsible for all law enforcement actions taken by the FBI within the field office. Five months prior to retirement, an investigation is opened within the office on Acme, Inc. The matter never comes to SAC Smith's attention before he retires. SAC Smith goes to work for Acme after retirement. For two years from the date of termination of Government employment, SAC Smith cannot represent Acme to the Government in connection with the investigation. In this instance, an investigation was begun within one year of SAC Smith's retirement and although he was not aware of the investigation, he reasonably should have known of the matter. After two years, SAC Smith may represent Acme before the Government in connection with the investigation.

In addition to these restrictions, there are several prohibitions in Section 207 which apply only to employees in <u>senior</u> positions and those involved in foreign matters. A senior

position is one where an official's basic rate of pay (without the locality-based pay adjustments) is equal to or greater than Level V of the Executive Schedule ($104,800 or Senior Executive Service employees at ES-level 5 or above).

Section 207(c) restricts, for one year, a former senior employee from representing any person/agency in any matter before the FBI which was pending during his/her last year in the senior position. Of importance to this restriction are two requirements. One, this one-year "cooling off" period begins when the employee ceases to be a senior employee. Second, the senior employee is not required to have ever been involved in the matter at issue. The purpose of this restriction is to ensure former senior employees do not use personal influence based on past affiliations for private gain.

Title 18, USC, Section 207(j) provides several exceptions to some of these restrictions. These include (but are not all-inclusive):

- Former employees may engage in post-employment activities in carrying out official duties on behalf of the United States, an agency of a state or local government, an accredited degree-granting institution of higher education, or a hospital or medical research organization which is tax exempt;

- Former employees may make statements concerning matters of which they have special knowledge as long as they are not compensated for this information;

- Former employees may furnish scientific or technological information provided the Director publishes in the Federal Register that this would be in the national interest; and

- Former employees may give testimony under oath or furnish statements required to be made under penalty of perjury, except for expert opinion testimony for which a court order is required if employees are subject to the lifetime prohibition.

A willful violation of this Section could be punishable by imprisonment of not more than five years. A violation that is not willful would be a misdemeanor, punishable by imprisonment of not more than one year. A civil action may also be brought by the Attorney General (AG) which could carry a penalty (fine) of not more than $50,000. The AG is also authorized to petition for an injunction against employees he has reason to believe are engaged in conduct prohibited by Section 207. If these

restrictions are violated, they may also cause tremendous problems to the employer. Companies could become ineligible to be awarded a contract, or worse, could find a contract is canceled or declared void.

The above information is not inclusive of all information in Title 18, USC, Section 207, nor are the examples applicable in all situations. Most interpretations of this Section are fact-specific, depending upon the employee's proposed outside employment and his/her current position and responsibilities. Specific situations for which questions may be raised should be referred to the Legal Counsel Division for guidance. The restrictions apply only to employees resigning/retiring after January 1, 1991. Employees who left Government service prior to that date remain under former Section 207 and implementing regulations codified at Title 5, CFR, Part 2637.

All employees should be aware of these restrictions. Those who are resigning/retiring from the Federal service should have their exit interview Form FD-193 documented that they have been advised of the restrictions of Section 207 and its interim regulations.

Manual and form changes follow.

William S. Sessions
Director

United States
Office of Government Ethics
Suite 500, 1201 New York Avenue, N.W.
Washington, D.C. 20005-3917

November 5, 1992

MEMORANDUM FOR DESIGNATED AGENCY ETHICS OFFICIALS
GENERAL COUNSELS
INSPECTORS GENERAL

FROM: STEPHEN D. POTTS
DIRECTOR

SUBJECT: Revised Materials Relating to 18 U.S.C. § 207

Anticipating an increased demand for post-employment counseling during the Presidential transition, we are providing some revised written materials that should facilitate advice and training concerning 18 U.S.C. § 207.

Statute. We have in the past distributed copies of the statutory language of 18 U.S.C. § 207, most recently in January 1991. The revised handout incorporates all amendments made to the statute since its revision by the Ethics Reform Act of 1989, including the addition of new section 207(k) and the amendment of section 207(f) as applied to the United States Trade Representative.

Revised Summary. Shortly before the effective date of the Ethics Reform Act amendments, we distributed a 14-page summary of 18 U.S.C. § 207 as amended by that Act. We have revised that summary's introductory material to reflect the passage of time and the publication of 5 C.F.R. Part 2641. We have also incorporated post-Ethics Reform Act amendments by including the Executive Level V threshold relating to the definition of "senior employee," by adding a brief description of the Presidential waiver authority in new section 207(k), and by revising the discussion of section 207(f) in relation to the United States Trade Representative. Also, in order to ensure consistency with Part 2641, we have changed certain language in the summary concerning the application of section 207(c) to special Government employees and the designation of components for purposes of that section. (As before, the summary does not discuss 18 U.S.C. § 208 or other provisions applicable when an employee seeks or negotiates for employment in the private sector.)

We hope these materials prove useful.

Attachments

B. SUBSTANTIVE RESTRICTIONS

1. Basic Prohibition of 18 U.S.C. § 207(a)(1). No former employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party or parties, in which he participated personally and substantially as an employee, and in which the United States is a party or has a direct and substantial interest.

Discussion. This is a lifetime restriction that commences upon an employee's termination from Government service. The target of this provision is the former employee who participates in a matter while employed by the Government and who later "switches sides" by representing another person on the same matter before the United States. The restriction is measured by the duration of the matter in which the former employee participated.

The restriction does not apply unless a former employee communicates to or makes an appearance before the United States on behalf of some other person. For these purposes, the "United States" refers to any employee of any department, agency, court, or court-martial of the United States (but not of the District of Columbia). The term does not include the Congress, and therefore communications to or appearances before Members of Congress and legislative staff are not prohibited by this provision.

A former employee is not prohibited by this restriction from providing "behind-the-scenes" assistance in connection with the representation of another person. Moreover, the restriction prohibits only those communications and appearances that are made "with the intent to influence." A "communication" can be made orally, in writing, or through electronic transmission. An "appearance" extends to a former employee's mere physical presence at a proceeding when the circumstances make it clear that his attendance is intended to influence the United States. An "intent to influence" the United States may be found if the communication or appearance is made for the purpose of seeking a discretionary Government ruling, benefit, approval, or other action, or is made for the purpose of influencing Government action in connection with a matter which the former employee knows involves an appreciable element of dispute concerning the particular Government action to be taken. Accordingly, the prohibition does not apply to an appearance or communication involving purely social contacts, a request for publicly available documents, or a request for purely factual information or the supplying of such information.

A communication to or appearance before the United States is not prohibited unless it concerns the same particular matter involving a specific party or parties in which the former employee participated personally and substantially while employed by the

November 4, 1992

SUMMARY OF POST-EMPLOYMENT RESTRICTIONS OF 18 U.S.C. § 207

I. INTRODUCTION

Since its enactment in 1962, 18 U.S.C. § 207 has remained the primary source of post-employment restrictions applicable to officers and employees of the executive branch. Unlike certain other post-employment laws, the provisions of section 207 apply to individuals regardless of the executive department or agency in which they served while employed by the Government and regardless of the particular duties they performed.

Section 207 has been amended several times over the years. Recently, for example, section 207 was substantially revised by the Ethics Reform Act of 1989. As a consequence of these amendments, former employees are subject to varying post-employment restrictions depending upon the date of their termination from Government service or from certain high-level positions.

Individuals who terminated service prior to January 1, 1991, should continue to consult the regulations published at Part 2637 of title 5, Code of Federal Regulations, for guidance concerning applicable provisions of section 207. Individuals terminating service on or after January 1, 1991, should consult this summary pending completion of revised regulatory guidance at 5 C.F.R. Part 2641. As of this date, Part 2641 contains guidance concerning 18 U.S.C. § 207(c) only. (Except where the underlying statutory provision has changed, Part 2637 remains persuasive concerning the interpretation of the newer version of 18 U.S.C. § 207.)

This summary was prepared by the U.S. Office of Government Ethics. While it has been coordinated with the Department of Justice, employees are cautioned that it reflects only a preliminary interpretation of the amendments to 18 U.S.C. § 207 enacted by the Ethics Reform Act of 1989 and thereafter.

II. SUMMARY OF RESTRICTIONS

Effective January 1, 1991, section 207 of title 18 sets forth six substantive prohibitions restricting the activities of individuals who leave Government service or who leave certain high-level positions in the executive branch. Each of these restrictions is discussed separately below, followed by a discussion of several statutory exceptions.

None of the provisions bar any individual, regardless of rank or position, from accepting employment with any private or public employer after Government service. Section 207 only prohibits

2. Basic Prohibition of 18 U.S.C. § 207(a)(2). For two years after his Government service terminates, no former employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party or parties, in which the United States is a party or has a direct and substantial interest, and which such person knows or reasonably should know was actually pending under his official responsibility within the one-year period prior to the termination of his employment with the United States.

Discussion. This is a two-year restriction that commences upon an employee's termination from Government service.

This provision is identical to the lifetime restriction discussed above except that it is of shorter duration and requires only that an individual have had official responsibility for a matter while employed by the Government, not that he have participated personally and substantially in that matter. Like the lifetime restriction, it prohibits certain communications and appearances made on behalf of any other person or entity except the United States (or the Congress). The communications and appearances prohibited are those made, with the intent to influence, to or before any employee of a department, agency, court, or court-martial of the United States. The representational bar applies with respect to any particular matter involving a specific party or parties that was actually pending under the former employee's official responsibility at some time during his last year of Government service.

"Official responsibility" is defined in 18 U.S.C. § 202 as "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action." The scope of an employee's official responsibility is usually determined by those areas assigned by statute, regulation, executive order, or job description. All particular matters under consideration in an agency are under the official responsibility of the agency head, and each is under that of any intermediate supervisor having responsibility for the activities of a subordinate employee who actually participates in the matter. An employee's recusal from or other non-participation in a matter does not remove it from his official responsibility.

A matter was "actually pending" under a former employee's official responsibility if the matter was in fact referred to or under consideration by persons within the employee's area of responsibility. A former employee is not subject to the restriction, however, unless at the time of the proposed representation of another he knows or reasonably should know that

advising any other person concerning a trade or treaty negotiation (that is still ongoing) on the basis of certain "covered" information. "Covered" information refers to agency records which were accessible to the employee, which he knew or should have known were designated as exempt from disclosure under the Freedom of Information Act (e.g., documents that were marked as subject to a national security classification or those otherwise designated in a manner that made it clear they were exempt from release under FOIA), and which concern a negotiation in which the employee participated personally and substantially during his last year of Government service. A former employee is not prohibited from utilizing information from an agency record which, at the time of his post-employment activity, is no longer exempt from disclosure under the Freedom of Information Act.

Only activities that are undertaken on behalf of "any other person" are prohibited by this restriction. Action taken on behalf of the United States (or the Congress) or on behalf of the former employee himself are not prohibited. A former employee "represents" another person when he acts as an agent or attorney for or otherwise communicates or makes an appearance on behalf of that person to or before any third party. For this purpose, a third party includes any employee of the executive, legislative, or judicial branch of the Federal Government, including a Member of Congress. A former employee "aids or advises" another person when he assists that person other than by communicating to or appearing before a third party. A former employee represents, aids, or advises another person "on the basis of" covered information if the former employee's representation, aid, or advice either involves a disclosure of covered information to any person, or could not have been made or rendered had the former employee not had actual knowledge of covered information.

It is important to note that although a post-employment activity may not be prohibited by section 207(b), a former employee must still be careful to comply with other statutory restrictions. For example, even though a trade or treaty negotiation may not yet have become "ongoing" at the time of an employee's official participation, the negotiation may nevertheless have had specific parties identified to it, thus triggering the lifetime restriction set forth in section 207(a)(1).

4. Basic Prohibition of 18 U.S.C. § 207(c). For one year after service in a "senior" position terminates, no former "senior" employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he served in any capacity during the one-year period prior to termination from "senior" service, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he seeks official action by that employee.

department or agency would be barred by section 207(c) from making communications to or appearances before any employee of that parent, but would not be barred as to employees of any designated component of that parent. An individual formerly serving in a designated component of a parent department or agency would be barred from communicating to or making an appearance before any employee of that component, but would not be barred as to any employee of the parent or of any other component. The statute now provides that no agency within the Executive Office of the President may be designated as a separate component.

The restrictions of section 207(c) can be waived altogether as to certain senior employee positions or categories of positions. As a consequence of such exemption, the one-year restriction of section 207(c) will not begin to run upon an employee's termination from such a position. In order to grant an exemption, OGE must receive a request to do so from a department or agency. After review of the request, OGE can grant an exemption or exemptions based upon its determination that as to a particular position or category of positions, the imposition of section 207(c) would create an undue hardship on the department or agency in obtaining qualified personnel and that the granting of the exemption would not create the potential for use of undue influence or advantage.

5. Basic Prohibition of 18 U.S.C. § 207(d). For one year after service in a "very senior" position terminates, no former "very senior" employee may knowingly make, with the intent to influence, any communication to or appearance before any individual appointed to an Executive Schedule position or before any employee of a department or agency in which he served as a "very senior" employee during the one-year period prior to termination from Government service, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he seeks official action by that individual or employee.

Discussion. This is a one-year restriction. The one-year period is measured from the date when an employee ceases to be a very senior employee, not from the termination of Government service, unless the two occur simultaneously.

This provision, applicable only to "very" senior employees, is very similar to the one-year restriction of section 207(c) discussed above. It too prohibits communications to or appearances before employees of certain governmental departments and agencies, unless on behalf of the United States (or the Congress). A former very senior employee is prohibited by section 207(d) from representing another before any current employee of any department or agency in which he served as a very senior employee during the one-year period prior to his termination from Government service. (Compare section 207(c) which prohibits communications and appearances to current employees of any department or agency in

> to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States.

A foreign political party includes --

> any organization or any other combination of individuals in a country other than the United States, or any unit or branch thereof, having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of a government of a foreign country or a subdivision thereof, or the furtherance or influencing of the political or public interests, policies, or relations of a government of a foreign country or a subdivision thereof.

A foreign commercial corporation will not generally be considered a "foreign entity" for purposes of section 207(f) unless it exercises the functions of a sovereign.

A former senior or very senior employee "represents" a foreign entity when he acts as an agent or attorney for or otherwise communicates or makes an appearance on behalf of that entity to or before any employee of a department or agency. He "aids or advises" a foreign entity when he assists the entity other than by making such a communication or appearance. Such "behind the scenes" assistance to a foreign entity could, for example, include drafting a proposed communication to an agency, advising on an appearance before a department, or consulting on other strategies designed to persuade departmental or agency decisionmakers to take certain action. A former senior or very senior employee's representation, aid, or advice is only prohibited if made or rendered with the intent to influence an official discretionary decision of a current departmental or agency employee.

C. EXCEPTIONS

Sections 207(j) and (k) set forth several exceptions to the statute's substantive prohibitions. As noted below, some exceptions do not avoid application of all of the six substantive restrictions of 18 U.S.C. § 207.

Performing Official Government Duties. A former employee is not restricted by any of the substantive provisions of section 207 from engaging in post-employment activities performed in carrying out official duties on behalf of the United States. This exception also extends to activities undertaken in carrying out official duties as an elected official of a state or local Government.

Representing Certain Entities. A former senior or very senior employee will not violate section 207(c) or (d) if his

The following is the current statutory language of 18 U.S.C. § 207, as amended by Pub.L. 95-521, Title V, § 501(a), Oct. 26, 1978, 92 Stat. 1864; Pub.L. 96-28, §§ 1, 2, June 22, 1979, 93 Stat. 76; Pub.L. 101-189, Div. A, Title VIII, § 814(d)(2), Nov. 29, 1989, 103 Stat. 1499; Pub.L. 101-194, Title I, § 101(a), Nov. 30, 1989, 103 Stat. 1716; Pub.L. 101-280, §§ 2(a), 5(d), May 4, 1990, 104 Stat. 149, 159; Pub.L. 101-509, Title V, § 529 [Title I, § 101(b)(8)(A)], Nov. 5, 1990, 104 Stat. 440; Pub.L. 102-25, Title VII, § 705(a), Apr. 6, 1991, 105 Stat. 120; Pub.L. 102-190, Div. B, Title XXXI, § 3138(a), Dec. 5, 1991, 105 Stat. 1579; Pub.L. 102-395, Title VI, § 609(a), Oct. 6, 1992, 106 Stat. 1873.

§ 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches

(a) RESTRICTIONS ON ALL OFFICERS AND EMPLOYEES OF THE EXECUTIVE BRANCH AND CERTAIN OTHER AGENCIES. --

(1) PERMANENT RESTRICTIONS ON REPRESENTATION ON PARTICULAR MATTERS. – Any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including any independent agency of the United States), or of the District of Columbia, and who, after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia) in connection with a particular matter --

(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) in which the person participated personally and substantially as such officer or employee, and

(C) which involved a specific party or specific parties at the time of such participation,

shall be punished as provided in section 216 of this title.

(2) TWO-YEAR RESTRICTIONS CONCERNING PARTICULAR MATTERS UNDER OFFICIAL RESPONSIBILITY. -- Any person subject to the restrictions contained in paragraph (1) who, within 2 years after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia), in connection with a particular matter --

> (A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,
>
> (B) which such person knows or reasonably should know was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States or the District of Columbia, and
>
> (C) which involved a specific party or specific parties at the time it was so pending,

shall be punished as provided in section 216 of this title.

(3) CLARIFICATION OF RESTRICTIONS. -- The restrictions contained in paragraphs (1) and (2) shall apply --

> (A) in the case of an officer or employee of the executive branch of the United States (including any independent agency), only with respect to communications to or appearances before any officer or employee of any department, agency, court, or court-martial of the United States on behalf of any other person (except the United States), and only with respect to a matter in which the United States is a party or has a direct and substantial interest; and
>
> (B) in the case of an officer or employee of the District of Columbia, only with respect to communications to or

appearances before any officer or employee of any department, agency, or court of the District of Columbia on behalf of any other person (except the District of Columbia), and only with respect to a matter in which the District of Columbia is a party or has a direct and substantial interest.

(b) ONE-YEAR RESTRICTIONS ON AIDING OR ADVISING. --

(1) IN GENERAL. -- Any person who is a former officer or employee of the executive branch of the United States (including any independent agency) and is subject to the restrictions contained in subsection (a)(1), or any person who is a former officer or employee of the legislative branch or a former Member of Congress, who personally and substantially participated in any ongoing trade or treaty negotiation on behalf of the United States within the 1-year period preceding the date on which his or her service or employment with the United States terminated, and who had access to information concerning such trade or treaty negotiation which is exempt from disclosure under section 552 of title 5, which is so designated by the appropriate department or agency, and which the person knew or should have known was so designated, shall not, on the basis of that information, knowingly represent, aid, or advise any other person (except the United States) concerning such ongoing trade or treaty negotiation for a period of 1 year after his or her service or employment with the United States terminates. Any person who violates this subsection shall be punished as provided in section 216 of this title.

(2) DEFINITION. -- For purposes of this paragraph --

(A) the term "trade negotiation" means negotiations which the President determines to undertake to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made; and

(B) the term "treaty" means an international agreement made by the President that requires the advice and consent of the Senate.

(c) ONE-YEAR RESTRICTIONS ON CERTAIN SENIOR PERSONNEL OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES. --

(1) RESTRICTIONS. -- In addition to the restrictions set forth in subsections (a) and (b), any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including an independent agency), who is referred to in paragraph (2), and who, within 1 year after the termination of his or her service or employment as such officer or employee, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency, shall be punished as provided in section 216 of this title.

(2) PERSONS TO WHOM RESTRICTIONS APPLY. -- (A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (d)) --

> (i) employed at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5,
>
> (ii) employed in a position which is not referred to in clause (i) and for which the basic rate of pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the rate of basic pay payable for level V of the Executive Schedule;
>
> (iii) appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the Vice President to a position under section 106(a)(1)(B) of title 3, or
>
> (iv) employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade 0-7 or above.

(B) Paragraph (1) shall not apply to a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates.

(C) At the request of department or agency, the Director of the Office of Government Ethics may waive the restrictions contained in paragraph (1) with respect to any position, or category of positions, referred to in clause (ii) or (iv) of subparagraph (A), in such department or agency if the Director determines that --

(i) the imposition of the restrictions with respect to such position or positions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions, and

(ii) granting the waiver would not create the potential for use of undue influence or unfair advantage.

(d) RESTRICTIONS ON VERY SENIOR PERSONNEL OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES. --

(1) RESTRICTIONS.-- In addition to the restrictions set forth in subsections (a) and (b), any person who --

(A) serves in the position of Vice President of the United States,

(B) is employed in a position in the executive branch of the United States (including any independent agency) at a rate of pay payable for level I of the Executive Schedule or employed in a position in the Executive Office of the President at a rate of pay payable for level II of the Executive Schedule, or

(C) is appointed by the President to a position under section 105(a)(2)(A) of title 3 or by the Vice President to a position under section 106(a)(1)(A) of title 3,

and, who, within 1 year after the termination of that person's service in that position, knowingly makes, with the intent to influence, any communication to or appearance before any person described in paragraph (2), on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action

by any officer or employee of the executive branch of the United States, shall be punished as provided in section 216 of this title.

(2) PERSONS WHO MAY NOT BE CONTACTED. -- The persons referred to in paragraph (1) with respect to appearances or communications by a person in a position described in subparagraph (A), (B), or (C) of paragraph (1) are --

(A) any officer or employee of any department or agency in which such person served in such position within a period of 1 year before such person's service or employment with the United States Government terminated, and

(B) any person appointed to a position in the executive branch which is listed in section 5312, 5313, 5314, 5315, or 5316 of title 5.

(e) RESTRICTIONS ON MEMBERS OF CONGRESS AND OFFICERS AND EMPLOYEES OF THE LEGISLATIVE BRANCH. --

(1) MEMBERS OF CONGRESS AND ELECTED OFFICERS. -- (A) Any person who is a Member of Congress or an elected officer of either House of Congress and who, within 1 year after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B) or (C), on behalf of any other person (except the United States) in connection with any matter on which such former Member of Congress or elected officer seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former Member of Congress are any Member, officer, or employee of either House of Congress, and any employee of any other legislative office of the Congress.

(C) The persons referred to in subparagraph (A) with respect to appearances or communications by a former elected officer are any Member, officer, or employee of the House of Congress in which the elected officer served.

(2) PERSONAL STAFF. -- (A) Any person who is an employee of a Senator or an employee of a Member of the House of

Representatives and who, within 1 year after the termination of that employment, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a person who is a former employee are the following:

(i) the Senator or Member of the House of Representatives for whom that person was an employee; and

(ii) any employee of that Senator or Member of the House of Representatives.

(3) COMMITTEE STAFF. – Any person who is an employee of a committee of Congress and who, within 1 year after the termination of that person's employment on such committee, knowingly makes, with the intent to influence, any communication to or appearance before any person who is a Member or an employee of that committee or who was a Member of the committee in the year immediately prior to the termination of such person's employment by the committee, on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(4) LEADERSHIP STAFF. – (A) Any person who is an employee on the leadership staff of the House of Representatives or an employee on the leadership staff of the Senate and who, within 1 year after the termination of that person's employment on such staff, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the following:

(i) in the case of a former employee on the leadership staff of the House of Representatives, those persons are any Member of the leadership of the House of Representatives and any employee on the leadership staff of the House of Representatives; and

(ii) in the case of a former employee on the leadership staff of the Senate, those persons are any Member of the leadership of the Senate and any employee on the leadership staff of the Senate.

(5) OTHER LEGISLATIVE OFFICES. -- (A) Any person who is an employee of any other legislative office of the Congress and who, within 1 year after the termination of that person's employment in such office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by any officer or employee of such office, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the employees and officers of the former legislative office of the Congress of the former employee.

(6) LIMITATION ON RESTRICTIONS. – (A) The restrictions contained in paragraphs (2), (3), and (4) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was paid a rate of basic pay equal to or greater than an amount which is 75 percent of the basic rate of pay payable for a Member of the House of Congress in which such employee was employed.

(B) The restrictions contained in paragraph (5) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was employed in a position for which the rate of basic pay,

exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the basic rate of pay payable for Level V of the Executive Schedule.

(7) DEFINITIONS. -- As used in this subsection --

(A) the term "committee of Congress" includes standing committees, joint committees, and select committees;

(B) a person is an employee of a House of Congress if that person is an employee of the Senate or an employee of the House of Representatives;

(C) the term "employee of the House of Representatives" means an employee of a Member of the House of Representatives, an employee of a committee of the House of Representatives, an employee of a joint committee of the Congress whose pay is disbursed by the Clerk of the House of Representatives, and an employee on the leadership staff of the House of Representatives;

(D) the term "employee of the Senate" means an employee of a Senator, an employee of a committee of the Senate, an employee of a joint committee of the Congress whose pay is disbursed by the Secretary of the Senate, and an employee on the leadership staff of the Senate;

(E) a person is an employee of a Member of the House of Representatives if that person is an employee of a Member of the House of Representatives under the clerk hire allowance;

(F) a person is an employee of a Senator if that person is an employee in a position in the office of a Senator;

(G) the term "employee of any other legislative office of the Congress" means an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the Copyright Royalty Tribunal, the United States Capitol

Police, and any other agency, entity, or office in the legislative branch not covered by paragraph (1), (2), (3), or (4) of this subsection;

(H) the term "employee on the leadership staff of the House of Representatives" means an employee of the office of a Member of the leadership of the House of Representatives described in subparagraph (L), and any elected minority employee of the House of Representatives;

(I) the term "employee on the leadership staff of the Senate" means an employee of the office of a Member of the leadership of the Senate described in subparagraph (M);

(J) the term "Member of Congress" means a Senator or a Member of the House of Representatives;

(K) the term "Member of the House of Representatives" means a Representative in, or a Delegate or Resident Commissioner to, the Congress;

(L) the term "Member of the leadership of the House of Representatives" means the Speaker, majority leader, minority leader, majority whip, minority whip, chief deputy majority whip, chief deputy minority whip, chairman of the Democratic Steering Committee, chairman and vice chairman of the Democratic Caucus, chairman, vice chairman, and secretary of the Republican Conference, chairman of the Republican Research Committee, and chairman of the Republican Policy Committee, of the House of Representatives (or any similar position created on or after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989);

(M) the term "Member of the leadership of the Senate" means the Vice President, and the President pro tempore, Deputy President pro tempore, majority leader, minority leader, majority whip, minority whip, chairman and secretary of the Conference of the Majority, chairman and secretary of the Conference of the Minority, chairman and co-chairman of the Majority Policy Committee, and chairman of the Minority Policy Committee, of the Senate

(or any similar position created on or after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989).

(f) RESTRICTIONS RELATING TO FOREIGN ENTITIES. --

(1) RESTRICTIONS. -- Any person who is subject to the restrictions contained in subsection (c), (d), or (e) and who knowingly, within 1 year after leaving the position, office, or employment referred to in such subsection --

(A) represents a foreign entity before any officer or employee of any department or agency of the United States with the intent to influence a decision of such officer or employee in carrying out his or her official duties, or

(B) aids or advises a foreign entity with the intent to influence a decision of any officer or employee of any department or agency of the United States, in carrying out his or her official duties,

shall be punished as provided in section 216 of this title.

(2) SPECIAL RULE FOR TRADE REPRESENTATIVE. -- With respect to a person who is the United States Trade Representative, the restrictions described in paragraph (1) shall apply to representing, aiding, or advising foreign entities within 3 years after the termination of that person's service as the United States Trade Representative.

(3) DEFINITION. -- For purposes of this subsection, the term "foreign entity" means the government of a foreign country as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended, or a foreign political party as defined in section 1(f) of that Act.

(g) SPECIAL RULES FOR DETAILEES. -- For purposes of this section, a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies, or such entities.

(h) DESIGNATIONS OF SEPARATE STATUTORY AGENCIES AND BUREAUS. --

(1) DESIGNATIONS. -- For purposes of subsection (c) and except as provided in paragraph (2), whenever the Director of the Office of Government Ethics determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and that there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate department or agency. On an annual basis the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his or her responsibilities under this paragraph.

(2) INAPPLICABILITY OF DESIGNATIONS. -- No agency or bureau within the Executive Office of the President may be designated under paragraph (1) as a separate department or agency. No designation under paragraph (1) shall apply to persons referred to in subsection (c)(2)(A)(i) or (iii).

(i) DEFINITIONS. -- For purposes of this section --

(1) the term "officer or employee", when used to describe the person to whom a communication is made or before whom an appearance is made, with the intent to influence, shall include --

(A) in subsections (a), (c), and (d), the President and the Vice President; and

(B) in subsection (f) the President, the Vice President, and Members of Congress;

(2) the term "participated" means an action taken as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action; and

(3) the term "particular matter" includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.

(j) EXCEPTIONS. --

(1) OFFICIAL GOVERNMENT DUTIES. -- The restrictions contained in this section shall not apply to acts done in carrying out official duties on behalf of the United States or the District of Columbia or as an elected official of a State or local government.

(2) STATE AND LOCAL GOVERNMENTS AND INSTITUTIONS, HOSPITALS, AND ORGANIZATIONS. -- The restrictions contained in subsections (c), (d), and (e) shall not apply to acts done in carrying out official duties as an employee of --

> (A) an agency or instrumentality of a State or local government if the appearance, communication, or representation is on behalf of such government, or
>
> (B) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986, if the appearance, communication, or representation is on behalf of such institution, hospital, or organization.

(3) INTERNATIONAL ORGANIZATIONS. -- The restrictions contained in this section shall not apply to an appearance or communication on behalf of, or advice or aid to, an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interests of the United States.

(4) SPECIAL KNOWLEDGE. -- The restrictions contained in subsections (c), (d), and (e) shall not prevent an individual from making or providing a statement, which is based on the individual's own special knowledge in the particular area that is the subject of the statement, if no compensation is thereby received.

(5) EXCEPTION FOR SCIENTIFIC OR TECHNOLOGICAL INFORMATION. -- The restrictions contained in subsection (a), (c), and (d) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information, if such communications are made under procedures acceptable to the department or agency concerned or if the head of the department or

agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee. For the purposes of this paragraph, the term "officer or employee" includes the Vice President.

(6) EXCEPTION FOR TESTIMONY. -- Nothing in this section shall prevent an individual from giving testimony under oath, or from making statements required to be made under penalty of perjury. Notwithstanding the preceding sentence --

(A) a former officer or employee of the executive branch of the United States (including any independent agency) who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter; and

(B) a former officer or employee of the District of Columbia who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the District of Columbia) in that matter.

(k)(1)(A) The President may grant a waiver of a restriction imposed by this section to any officer or employee described in paragraph (2) if the President determines and certifies in writing that it is in the public interest to grant the waiver and that the services of the officer or employee are critically needed for the benefit of the Federal Government. Not more than 25 officers and employees currently employed by the Federal Government at any one time may have been granted waivers under this paragraph.

(B)(i) A waiver granted under this paragraph to any person shall apply only with respect to activities engaged in by that person after that person's Federal Government employment is terminated and only to that person's employment at a Government-owned, contractor operated entity with which the person served as an officer or employee immediately before the person's Federal Government employment began.

(ii) Notwithstanding clause (i), a waiver granted under this paragraph to any person who was an officer or employee of Lawrence Livermore National Laboratory, Los Alamos National Laboratory, or Sandia National Laboratory immediately before the person's Federal Government employment began shall apply to that person's employment by any such national laboratory after the person's employment by the Federal Government is terminated.

(2) Waivers under paragraph (1) may be granted only to civilian officers and employees of the executive branch, other than officers and employees in the Executive Office of the President.

(3) A certification under paragraph (1) shall take effect upon its publication in the Federal Register and shall identify –

(A) the officer or employee covered by the waiver by name and by position, and

(B) the reasons for granting the waiver.

A copy of the certification shall also be provided to the Director of the Office of Government Ethics.

(4) The President may not delegate the authority provided by this subsection.

(5)(A) Each person granted a waiver under this subsection shall prepare reports, in accordance with subparagraph (B), stating whether the person has engaged in activities otherwise prohibited by this section for each six-month period described in subparagraph (B), and if so, what those activities were.

(B) A report under subparagraph (A) shall cover each six-month period beginning on the date of the termination of the person's Federal Government employment (with respect to which the waiver under this subsection was granted) and ending two years after that date. Such report shall be filed with the President and the Director of the Office of Government Ethics not later than 60 days after the end of the six-month period covered by the report. All reports filed with the Director under this paragraph shall be made available for public inspection and copying.

(C) If a person fails to file any report in accordance with subparagraphs (A) and (B), the President shall revoke the waiver and shall notify the person of the revocation. The revocation shall take effect upon the person's receipt of the notification and shall remain in effect until the report is filed.

(D) Any person who is granted a waiver under this subsection shall be ineligible for appointment in the civil service unless all reports required of such person by subparagraphs (A) and (B) have been filed.

(E) As used in this subsection, the term "civil service" has the meaning given that term in section 2101 of title 5.

D

United States
Office of Government Ethics
Suite 500, 1201 New York Avenue, N.W.
Washington, D.C. 20005-3917

October 26, 1990

MEMORANDUM

TO: Designated Agency Ethics Officials, General Counsels and Inspectors General

FROM: Stephen D. Potts
Director

SUBJ: Revised Post-Employment Restrictions of 18 U.S.C. § 207

The Office of Government Ethics is currently revising Part 2637 of title 5, Code of Federal Regulations, to reflect the amendments made to 18 U.S.C. § 207 by the Ethics Reform Act of 1989, Public Law 101-194, Nov. 30, 1989, 103 Stat. 1716 and by the technical amendments enacted by Public Law 101-280, May 4, 1990, 104 Stat. 149. Recognizing that the effective date of the revised section 207 is fast approaching, we have attached a summary of its post-Government service employment restrictions as they will be in effect for executive branch employees who terminate Government service on or after January 1, 1991. The summary is designed to provide initial guidance until a revised Part 2637 is issued. Although the content of the summary was coordinated with the Department of Justice, it reflects only a preliminary interpretation of the new or revised portions of the statute.

The summary is provided for appropriate distribution to agency employees. We have also attached a copy of the text of section 207 as amended by both the Ethics Reform Act and the subsequent technical amendments enacted on May 4. This document, dated 6/90, incorporates certain typographical corrections made since we first distributed it last spring.

Attachments

October 26, 1990

Summary of Post-Employment Restrictions of 18 U.S.C. § 207

I. Recent Amendments to 18 U.S.C. § 207

Since its enactment in 1962, 18 U.S.C. § 207 has remained the primary source of post-employment restrictions applicable to officers and employees of the executive branch. Unlike certain other post-employment laws, the provisions of section 207 apply to individuals regardless of the executive department or agency in which they served while employed by the Government and regardless of the particular duties they performed. Although certain of the restrictions of section 207 will apply to Members and elected officials of Congress and to legislative staff beginning in January 1991, this summary is not intended to provide guidance to these individuals.

Section 207 has been amended several times over the years. Most recently, section 207 was amended by the Ethics Reform Act of 1989, with technical amendments enacted on May 4, 1990. Individuals who terminate Government service on or after January 1, 1991, are subject to the post-employment restrictions of section 207 as amended by these recent enactments. Employees terminating Government service before January 1, 1991, are subject to section 207 as it is now in effect.

Individuals who have terminated or will terminate Government service prior to January 1, 1991 should continue to consult the regulations published at Part 2637 of title 5, Code of Federal Regulations, for guidance concerning applicable provisions of section 207. While the Office of Government Ethics (OGE) is drafting revisions to Part 2637 to reflect the recent amendments, the summary below is provided by OGE in the interim to ensure that current employees have a general understanding of the revised post-employment restrictions with which they must comply should they leave Government on or after January 1, 1991.

While this summary has been coordinated with the Department of Justice, employees are cautioned that it reflects only a preliminary interpretation of the new or revised portions of 18 U.S.C. § 207.

II. Summary of Revised Restrictions

Effective January 1, 1991, section 207 of title 18 will set forth six substantive prohibitions restricting the activities of individuals who leave Government service or who leave certain high-level positions in the executive branch. Each of these restrictions is discussed separately below, followed by a discussion of several statutory exceptions.

None of the provisions will bar any individual, regardless of rank or position, from accepting employment with any private or public employer after Government service. As before, section 207 will only prohibit individuals from engaging in certain activities on behalf of persons or entities other than the United States, whether or not done for compensation. While section 207 will continue to prohibit certain representational activities before the United States, the revised statute will also prohibit certain "behind-the-scenes" assistance rendered to others. None of the revised provisions will bar self-representation.

A. Applicability

The first three restrictions [§§ 207(a)(1), (a)(2), and (b)] are applicable to former officers or employees of the executive branch. They also apply to former senior or very senior employees as those terms are described below, and to former special Government employees. According to 18 U.S.C. § 202, a "special Government employee" includes an individual who is "retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis ...." (Enlisted personnel of the uniformed services are not "officers" or "employees" for purposes of section 207.)

The fourth restriction [§207(c)] is applicable only to former "senior personnel" (hereinafter referred to as "senior employees"). A senior employee is any employee (other than an individual covered by the fifth restriction) who was employed in a position for which the rate of pay is specified in or fixed according to the Executive Schedule, in a position for which the rate of basic pay is equal to or greater than the rate of basic pay payable for GS-17 of the General Schedule, or in a position which is held by an active duty

commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade is 0-7 or above.[1] The term includes those individuals appointed by the President to a position under 3 U.S.C. § 105(a)(2)(B) or by the Vice President to a position under 3 U.S.C. § 106(a)(1)(B). The term senior employee encompasses a former special Government employee only if he served in a senior position for 60 or more days during his last year of Government service.

The fifth restriction [§ 207(d)] applies only to former "very senior personnel" (hereinafter referred to as "very senior employees"). A very senior employee is any employee who was employed in a position at the rate of pay payable for level I of the Executive Schedule, or in a position in the Executive Office of the President at a rate of pay equal to or greater than the rate of pay payable for level II of the Executive Schedule. The term includes the Vice President and those individuals appointed by the President to a position under 3 U.S.C. § 105(a)(2)(A) or by the Vice President to a position under 3 U.S.C. § 106(a)(1)(A).

The sixth restriction [§ 207(f)] applies to individuals who formerly served in either a senior or very senior position.

B. Substantive Restrictions

1. Basic Prohibition of 18 U.S.C. § 207(a)(1). No former employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party or parties, in which he participated personally and substantially as an employee, and in which the United States is a party or has a direct and substantial interest.

Discussion. This is a lifetime restriction that commences upon an employee's termination from Government service. It is very similar to the present lifetime restriction. The target

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[1] Section 5307(b)(8)(A) of the Federal Employees Pay Comparability Act of 1990 (contained in H.R. 5241, the Treasury, Postal Service and General Government Appropriations Act of 1991) amends section 18 U.S.C. § 207(c)(2)(A)(ii). The basic rate of pay payable for level V of the Executive Schedule would replace the GS-17 threshold. Final passage of H.R. 5241 occurred October 24, 1990, and the bill will be sent to the President as enrolled.

of this provision is the former employee who participates in a matter while employed by the Government and who later "switches sides" by representing another person on the same matter before the United States. The restriction is measured by the duration of the matter in which the former employee participated.

The restriction does not apply unless a former employee communicates to or makes an appearance before the United States on behalf of some other person. For these purposes, the "United States" refers to any employee of any department, agency, court, or court-martial of the United States (but not of the District of Columbia). The term does not include the Congress, and therefore communications to or appearances before Members of Congress and legislative staff are not prohibited by this provision.

A former employee is not prohibited by this restriction from providing "behind-the-scenes" assistance in connection with the representation of another person. Moreover, the restriction prohibits only those communications and appearances that are made "with the intent to influence." A "communication" can be made orally, in writing, or through electronic transmission. An "appearance" extends to a former employee's mere physical presence at a proceeding when the circumstances make it clear that his attendance is intended to influence the United States. An "intent to influence" the United States may be found if the communication or appearance is made for the purpose of seeking a discretionary Government ruling, benefit, approval, or other action, or is made for the purpose of influencing Government action in connection with a matter which the former employee knows involves an appreciable element of dispute concerning the particular Government action to be taken. Accordingly, the prohibition does not apply to an appearance or communication involving purely social contacts, a request for publicly available documents, or a request for purely factual information or the supplying of such information.

A communication to or appearance before the United States is not prohibited unless it concerns the same particular matter involving a specific party or parties in which the former employee participated personally and substantially while employed by the Government. An employee can participate "personally" in a matter even though he merely directs a subordinate's participation. He participates "substantially" if his involvement is of significance to the matter. Thus, while a series of peripheral involvements may be insubstantial, participation in a single critical step may be substantial. The term "particular matter" includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation,

arrest, or judicial or other proceeding. In determining whether two situations are part of the same particular matter, one should consider all relevant factors, including the amount of time elapsed and the extent to which the matters involve the same basic facts or issues and the same or related parties. Even if a post-employment communication or appearance would concern the same particular matter, however, the representational bar will not apply unless the United States is a party or has a direct and substantial interest in that matter at the time of the post-employment representation.

The provision requires that an employee's official participation in a particular matter have taken place at a time when the matter involved a specific party (or parties). It also requires that the matter involve some specific party or parties at the time of the post-employment communication or appearance (although these can be different parties than were involved with the matter at the time of the employee's participation). General rulemakings do not usually involve specific parties. Consequently, it is quite possible that an employee who participated in a rulemaking while employed by the Government will, after leaving Government service, be able to appear before his former agency concerning the application of that rule to his new private sector employer without violating the lifetime restriction. Contracts, on the other hand, are always particular matters involving specific parties. A Government procurement has specific parties identified to it when a bid or proposal is received in response to a solicitation, if not before.

The provision does not prohibit a former employee from representing himself before the United States (as distinguished from a corporation or consulting firm). Moreover, a former employee is not prohibited from acting on behalf of the United States (or the Congress). Thus, even though an individual may once have worked on a matter while employed by the Government, he will not, while subsequently reemployed by the Government, be barred from communicating with any employee of the United States concerning that matter if he does so as part of his official duties. A former employee does not act on behalf of the United States, however, merely because the United States may share the same objective as the person whom the former employee is representing.

2. Basic Prohibition of 18 U.S.C. § 207(a)(2). For two years after his Government service terminates, no former employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of the United States on behalf

of any other person (except the United States) in connection with a particular matter involving a specific party or parties, in which the United States is a party or has a direct and substantial interest, and which such person knows or reasonably should know was actually pending under his official responsibility within the one-year period prior to the termination of his employment with the United States.

Discussion. This is a two-year restriction that commences upon an employee's termination from Government service. It is very similar to a present two-year restriction.

This provision is identical to the lifetime restriction discussed above except that it is of shorter duration and requires only that an individual have had official responsibility for a matter while employed by the Government, not that he have participated personally and substantially in that matter. Like the lifetime restriction, it prohibits certain communications and appearances made on behalf of any other person or entity except the United States (or the Congress). The communications and appearances prohibited are those made, with the intent to influence, to or before any employee of a department, agency, court, or court-martial of the United States. The representational bar applies with respect to any particular matter involving a specific party or parties that was actually pending under the former employee's official responsibility at some time during his last year of Government service.

"Official responsibility" is defined in 18 U.S.C. § 202 as "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action." The scope of an employee's official responsibility is usually determined by those areas assigned by statute, regulation, executive order, or job description. All particular matters under consideration in an agency are under the official responsibility of the agency head, and each is under that of any intermediate supervisor having responsibility for the activities of a subordinate employee who actually participates in the matter. An employee's recusal from or other non-participation in a matter does not remove it from his official responsibility.

A matter was "actually pending" under a former employee's official responsibility if the matter was in fact referred to or under consideration by persons within the employee's area of responsibility. A former employee is not subject to the

restriction, however, unless at the time of the proposed representation of another he knows or reasonably should know that the matter had been under his responsibility during his last year of Government service.

3. Basic Prohibition of 18 U.S.C. § 207(b). For one year after his Government service terminates, no former employee may knowingly represent, aid, or advise on the basis of covered information, any other person (except the United States) concerning any ongoing trade or treaty negotiation in which, during his last year of Government service, he participated personally and substantially as an employee.

Discussion. This is a new one-year restriction that commences upon an employee's termination from Government service. Extending to certain "behind-the-scenes" assistance, this provision can serve to augment the representational bar provided for in the lifetime restriction discussed above. As with the other new substantive provisions of section 207, it is emphasized that this guidance concerning section 207(b) is preliminary only and is subject to future clarification.

The restriction set forth in section 207(b) does not apply unless, during the one-year period before he left Government, an employee participated personally and substantially in an "ongoing" trade or treaty negotiation that is covered by the statute. It is not necessary that a former employee have had actual contact with foreign parties in order to have participated personally and substantially in a trade or treaty negotiation. An employee is covered by this restriction even though his participation in an ongoing negotiation may have occurred prior to January 1, 1991, the effective date of section 207(b).

Trade negotiations covered by the statute are those that the President determines to undertake pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988. Unless there is an earlier public announcement of a determination by the President, a trade negotiation commences to be "ongoing" when, at least 90 days before entering into a trade agreement, the President notifies both the House of Representatives and the Senate of his intention to enter into an agreement. See § 1103(a)(1)(A). Whether an employee participated personally and substantially in an "ongoing" trade negotiation is determined by reviewing an employee's participation after trade negotiations commenced. A treaty is an international agreement made by the President that requires the advice and consent of the Senate. A negotiation on a treaty commences to be "ongoing" at the point when both (1) the

determination has been made by a competent authority that the outcome of a negotiation will be a treaty, and (2) discussions with a foreign government have begun on a text. Trade and treaty negotiations both cease to be ongoing when an agreement or treaty enters into force or when all parties to the negotiation cease discussion based on a mutual understanding that the agreement or treaty will not be consummated.

Once he has participated in an ongoing negotiation, section 207(b) prohibits a former employee from representing, aiding, or advising any other person concerning a trade or treaty negotiation (that is still ongoing) on the basis of certain "covered" information. "Covered" information refers to agency records which were accessible to the employee, which he knew or should have known were designated as exempt from disclosure under the Freedom of Information Act (e.g., documents that were marked as subject to a national security classification or those otherwise designated in a manner that made it clear they were exempt from release under FOIA), and which concern a negotiation in which the employee participated personally and substantially during his last year of Government service. A former employee is not prohibited from utilizing information from an agency record which, at the time of his post-employment activity, is no longer exempt from disclosure under the Freedom of Information Act.

Only activities that are undertaken on behalf of "any other person" are prohibited by this restriction. Action taken on behalf of the United States (or the Congress) or on behalf of the former employee himself are not prohibited. A former employee "represents" another person when he acts as an agent or attorney for or otherwise communicates or makes an appearance on behalf of that person to or before any third party. For this purpose, a third party includes any employee of the executive, legislative, or judicial branch of the Federal Government, including a Member of Congress. A former employee "aids or advises" another person when he assists that person other than by communicating to or appearing before a third party. A former employee represents, aids, or advises another person "on the basis of" covered information if the former employee's representation, aid, or advice either involves a disclosure of covered information to any person, or could not have been made or rendered had the former employee not had actual knowledge of covered information.

It is important to note that although a post-employment activity may not be prohibited by section 207(b), a former employee must still be careful to comply with other statutory restrictions. For example, even though a trade or treaty negotiation may not yet

have become "ongoing" at the time of an employee's official participation, the negotiation may nevertheless have had specific parties identified to it, thus triggering the lifetime restriction set forth in section 207(a)(1). Also, former employees remain covered by statutory restrictions prohibiting the release of classified information.

4. Basic Prohibition of 18 U.S.C. § 207(c). For one year after service in a "senior" position terminates, no former "senior" employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he served in any capacity during the one-year period prior to termination from "senior" service, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he seeks official action by that employee.

Discussion. This is a one-year restriction. The one-year period is measured from the date when an employee ceases to be a senior employee, not from the termination of Government service, unless the two occur simultaneously. The purpose of this one-year "cooling off" period is to allow for a period of adjustment to new roles for the former senior employee and the agency he served, and to diminish any appearance that Government decisions might be affected by the improper use by an individual of his former senior position. As already noted, this provision is applicable to "senior" employees, but not to "very senior" employees.

Like the lifetime restriction discussed above, this provision prohibits communications to and appearances before the Government and does not prohibit "behind-the-scenes" assistance. Unlike the lifetime restriction, however, this one-year restriction applies only to a "senior" employee, does not require that the former employee have ever been in any way involved in the matter that is the subject of the communication or appearance, and only prohibits communications to or appearances before employees of any department or agency in which he formerly served in any capacity during the one-year period prior to his termination from senior service. The representational bar applies with respect to any matter, whether or not involving a specific party, concerning which the former senior employee is seeking official action by a current employee of such department or agency on behalf of any other person except the United States (or the Congress).

As described below, section 207 provides for two methods by which the restrictions of section 207(c) can be narrowed or

eliminated. The first is through the designation of separate departmental or agency components and the second is through the exemption of a position or category of positions from coverage. Not all senior employees are eligible to benefit from either or both of these procedures. A former senior employee is ineligible to benefit from these procedures if he is subject to section 207(c) by virtue of having served in a position for which the rate of pay is specified in or fixed according to the Executive Schedule or by virtue of having been appointed by the President to a position under 3 U.S.C. § 105(a)(2)(B) or by the Vice President to a position under 3 U.S.C. § 106(a)(1)(B).

As has been noted, the representational bar usually extends to any department or agency in which the former senior employee served in any capacity during the year prior to his termination from senior service. However, certain senior employees may be permitted to communicate to or appear before components of their former department or agency if those components have been designated as separate agencies or bureaus by OGE. For example, although it may not by statute be a separate component, OGE could designate the Defense Logistics Agency as an agency that exercises functions which are separate and distinct from its "parent" department, the Department of Defense. An individual formerly serving in a parent department or agency would be barred by section 207(c) from making communications to or appearances before any employee of that parent, but would not be barred as to employees of any designated component of that parent. An individual formerly serving in a designated component of a parent department or agency would be barred from communicating to or making an appearance before any employee of that component, but would not be barred as to any employee of the parent or of any other designated component. The statute now provides that no agency within the Executive Office of the President may be designated as a separate component.

The restrictions of section 207(c) can be waived altogether as to certain senior employee positions or categories of positions. As a consequence of such exemption, the one-year restriction of section 207(c) will not begin to run upon an employee's termination from such a position. In order to grant an exemption, OGE must receive a request to do so from a department or agency. After review of the request, OGE can grant an exemption or exemptions based upon its determination that as to a particular position or category of positions, the imposition of section 207(c) would create an undue hardship on the department or agency in obtaining qualified personnel and that the granting of the exemption would not create the potential for use of undue influence or advantage.

5. Basic Prohibition of 18 U.S.C. § 207(d). For one year after service in a "very senior" position terminates, no former "very senior" employee may knowingly make, with the intent to influence, any communication to or appearance before any individual appointed to an Executive Schedule position or before any employee of a department or agency in which he served as a "very senior" employee during the one-year period prior to termination from Government service, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he seeks individual action by that individual or employee.

Discussion. This is a new one-year restriction. The one-year period is measured from the date when an employee ceases to be a very senior employee, not from the termination of Government service, unless the two occur simultaneously.

This provision, applicable only to "very" senior employees, is very similar to the one-year restriction of section 207(c) discussed above. It too prohibits communications to or appearances before employees of certain governmental departments and agencies, unless on behalf of the United States (or the Congress). A former very senior employee is prohibited by section 207(d) from representing another before any current employee of any department or agency in which he served as a very senior employee during the one-year period prior to his termination from Government service. (Compare section 207(c) which prohibits communications and appearances to current employees of any department or agency in which a former "senior" employee served in any capacity during the one-year period prior to termination from senior service.) A former very senior employee is also prohibited by section 207(d), however, from representing another person before any individual currently appointed to an Executive Schedule position listed in 5 U.S.C. §§ 5312-5216, whether or not that individual is serving in the very senior employee's former department or agency. The representational bar applies to any matter, whether or not involving a specific party, concerning which the former very senior employee is seeking official action by any current officer or employee of the executive branch.

Section 207 does not authorize OGE to designate separate and distinct components within a department or agency as a means of narrowing the scope of section 207(d). Moreover, no very senior employee is eligible for exemption from the application of section 207(d).

6. Basic Prohibition of 18 U.S.C. § 207(f). For one year after his service in a "senior" or "very senior" position terminates, no former "senior" employee or former "very senior" employee may knowingly, with the intent to influence a decision of an employee of a department or agency of the United States in carrying out his official duties, represent a foreign entity before any department or agency of the United States or aid or advise a foreign entity.

Discussion. This is a new one-year restriction that is measured from the date when an employee ceases to be a senior employee or a very senior employee, not from the termination of Government service, unless the two occur simultaneously.

The restriction prohibits a former senior or very senior employee from representing, aiding, or advising a foreign entity with the intent to influence certain governmental officials. A "foreign entity" means the "government of a foreign country" as defined in section 1(e) of the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611), as amended, or a "foreign political party" as defined in section 1(f) of that Act. The government of a foreign country includes --

> any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States, or any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States.

A foreign political party includes --

> any organization or any other combination of individuals in a country other than the United States, or any unit or branch thereof, having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of a government of a foreign country or a subdivision thereof, or the furtherance or influencing of the political or public interests, policies, or relations of a government of a

foreign country or a subdivision thereof.

A foreign commercial corporation will not generally be considered a "foreign entity" for purposes of section 207(f) unless it exercises the functions of a sovereign.

A former senior or very senior employee "represents" a foreign entity when he acts as an agent or attorney for or otherwise communicates or makes an appearance on behalf of that entity to or before any employee of a department or agency. He "aids or advises" a foreign entity when he assists the entity other than by making such a communication or appearance. Such "behind the scenes" assistance to a foreign entity could, for example, include drafting a proposed communication to an agency, advising on an appearance before a department, or consulting on other strategies designed to persuade departmental or agency decisionmakers to take certain action. A former senior or very senior employee's representation, aid, or advice is only prohibited if made or rendered with the intent to influence an official discretionary decision of a current departmental or agency employee.

C. Exceptions

Revised section 207(j) sets forth several exceptions to the statute's substantive prohibitions. As noted below, some exceptions do not avoid application of all of the six substantive restrictions of 18 U.S.C. § 207.

Performing Official Government Duties. A former employee is not restricted by any of the substantive provisions of section 207 from engaging in post-employment activities performed in carrying out official duties on behalf of the United States. This exception also extends to activities undertaken in carrying out official duties as an elected official of a state or local Government.

Representing Certain Entities. A former senior or very senior employee will not violate section 207(c) or (d) if his communication or appearance is made in carrying out official duties as an employee of and is made on behalf of (1) an agency or instrumentality of a State or local Government, (2) an accredited degree-granting institution of higher education as defined in section 1201(a) of the Higher Education Act of 1965, or (3) a hospital or medical research organization exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986.

Representing or Assisting International Organizations. A former employee is not restricted by any of the substantive provisions of section 207 from representing, aiding, or advising an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interest of the United States.

Imparting Special Knowledge. A former senior or very senior employee will not violate section 207(c) or (d) if he makes a statement that is based on his own special knowledge in the particular area that is the subject of the statement, provided that he receives no compensation for making the statement.

Scientific or Technological Information or Expertise. A former employee will not violate section 207(a)(1), (a)(2), (c), or (d) if he makes a communication solely for the purpose of furnishing scientific or technological information in accordance with procedures acceptable to the agency involved. Alternatively, a former employee may make a communication if the head of the agency concerned publishes a certification in the Federal Register stating that the former employee has outstanding qualifications in a scientific, technological, or other technical discipline, that he is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the former employee's participation.

Testimony. A former employee is not restricted by any of the substantive restrictions of section 207 from giving testimony under oath or from making statements required to be made under penalty of perjury, subject to a special rule with respect to expert opinion testimony. Unless expert opinion testimony is given pursuant to court order, a former employee may not provide such testimony on a matter on behalf of any other person except the United States (or the Congress) if he is subject to the lifetime prohibition contained in section 207(a)(1) relating to that matter.

E

§ 530.204 [Amended]

4. In § 530.204, paragraph (d) is removed.

5. A new § 530.206 is added to read as follows:

§ 530.206 Application of aggregate limitation on pay in calendar year 1991.

In calendar year 1991, the aggregate limitation on pay shall be applied to aggregate compensation received by the employee on or after February 3, 1991, and before January 1, 1992.

[FR Doc. 92-2034 Filed 1-27-92; 8:45 am]
BILLING CODE 6325-01-M

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209-AA14

Post-Employment Conflict of Interest; Exemption of Positions and Designation of Additional Agency Components for the Executive Branch

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing this rule (1) to exempt certain senior employee positions for purposes of 18 U.S.C. 207(c); and (2) to designate certain additional departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c) as authorized by 18 U.S.C. 207(h).

EFFECTIVE DATE: January 28, 1992.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attention: Ms. Loring.

FOR FURTHER INFORMATION CONTACT: Julia S. Loring, Office of Government Ethics, telephone (202/FTS) 523-5757, FAX (202/FTS) 523-6325.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion of Exemption of Positions and Designation of Additional Agency Components

Exemption of Positions

The Director of the Office of Government Ethics (OGE) is authorized by 18 U.S.C. 207(c)(2)(C) to exempt eligible employee positions from 18 U.S.C. 207(c), the one-year post-employment restriction applicable to "senior" employees. Pursuant to the procedures prescribed in 5 CFR 2641.201(d) (56 FR 3964, February 1, 1991), the Designated Agency Ethics Official at the Securities and Exchange Commission forwarded a letter to OGE October 15, 1991, requesting that the Director exempt two senior employee positions: (1) The Office of General Counsel's Solicitor, and (2) the Division of Enforcement's Chief Litigation Counsel.

After carefully reviewing that letter and other relevant information, the Director determined to exempt the two positions from 18 U.S.C. 207(c) in light of the criteria set forth in 5 CFR 2641.201(d)(5). Although these exemptions became effective on October 29, 1991, the date of the Director's written response to the Securities and Exchange Commission, 5 CFR 2641.201(d)(3)(iii) provides that the Director "shall annually publish in appendix A to this part an updated compilation of all exempted positions * * *." Accordingly, appendix A of part 2641 is being amended by this rule to ensure publication of these two exemptions in the CFR.

Appendix A of this part includes parenthetical entries highlighting the effective dates of the exemptions. As indicated in 5 CFR 2641.201(d)(4), "[a]n exemption shall inure to the benefit of the individual who holds the position when the exemption takes effect, as well as to his successors, but shall not benefit individuals who terminated senior service prior to the effective date of the exemption."

Designation of Executive Agency Components

The Director of OGE is authorized by 18 U.S.C. 207(h) to designate separate departmental and agency components in the executive branch for purposes of 18 U.S.C. 207(c). The one-year representational bar of 18 U.S.C. 207(c) usually extends to any department or agency in which a former senior employee served in any capacity during the year prior to termination from senior service. However, eligible senior employees may be permitted to communicate to or appear before components of their former department or agency if those components have been designated as separate agencies or bureaus by OGE. Initial component designations applicable with respect to employees terminating senior service on or after January 1, 1991, were published in appendix B of 5 CFR part 2641 last year (56 FR 3965, February 1, 1991). Pursuant to the procedures prescribed in 5 CFR 2641.201(e), several departments have subsequently forwarded letters to OGE requesting the designation of additional distinct and separate components for purposes of that statutory provision.

By letter dated April 9, 1991, the Alternate Designated Agency Ethics Official at the Department of Justice requested that the Director clarify that the Office of Justice Programs (including its five previously designated constituent bureaus) should be treated as one single distinct and separate component for purposes of 18 U.S.C. 207(c). The letter also requested that the Executive Office for United States Attorneys and the Executive Office for United States Trustees each be treated as distinct and separate from the rest of the Justice Department. In each case, however, the particular Executive Office would not be treated as separate from any of the district offices served by it. In a subsequent letter dated October 15, 1991, the Department's Alternate Designated Agency Ethics Official requested that the Office of the Pardon Attorney also be designated as a distinct and separate component.

By letter dated November 6, 1991, the Designated Agency Ethics Official at the Department of the Interior requested designation of ten components as distinct and separate from the rest of the Interior Department. The bureaus proposed for designation were the Bureau of Indian Affairs, the Bureau of Land Management, the Bureau of Mines, the Bureau of Reclamation, the Minerals Management Service, the National Park Service, the Office of Surface Mining, the Office of Territorial and International Affairs, the U.S. Fish and Wildlife Service, and the U.S. Geological Survey. The Department's Designated Agency Ethics Official noted that there are five Assistant Secretaries that have responsibility for one or more of the ten bureaus proposed for designation. These Assistant Secretaries are subject to 18 U.S.C. 207(c), but are not eligible to benefit from the narrowing effect of component designation. For purposes of determining the scope of the post-employment restriction in the case of an eligible senior employee serving on an Assistant Secretary's immediate staff, the Department's Designated Agency Ethics Official recommended that all bureaus under the jurisdiction of a particular Assistant Secretary should be treated as a single component.

By letter dated November 26, 1991, the Designated Agency Ethics Official at the Department of Commerce requested designation of three additional components as distinct and separate from the rest of the Commerce Department. The bureaus proposed for designation were the Bureau of Export Administration, the Technology Administration, and the United States Travel and Tourism Administration. Similarly, the Designated Agency Ethics Official at the Department of Health and Human Services forwarded a letter to

the Director of OGE dated November 29, 1991, requesting that the Administration for Children and Families be designated an additional district and separate component of that Department.

After carefully reviewing the letters from the Department of Justice, the Department of the Interior, the Department of Commerce, and the Department of Health and Human Services in light of the criteria set forth in 5 CFR 2641.201(e)(6), the Director has determined to designate distinct and separate components as requested in that correspondence. As indicated in 5 CFR 2641.201(e)(4), a designation "shall be effective as of the effective date of the rule that creates the designation, but shall not be effective as to employees who terminated senior service prior to that date." The effective date of each designation is indicated in appendix B of this part. (Note that the effective date of the designation of the entire Office of Justice Programs—now listed as a single entity—is January 1, 1991.)

At the request of the Department of Defense, appendix B of this part has also been amended to indicate that the name of the Defense Communications Agency has been changed to the Defense Information Systems Agency.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, the Director of the Office of Government Ethics finds that good cause exists for waiving the general notice of proposed rulemaking and 30-day delayed effective date. It is important that the designation by OGE of exempted positions and separate agency components be published in the Federal Register as promptly as possible. Furthermore, since this rule is interpretive in nature, it is exempt from the notice and delayed effectiveness requirements of 5 U.S.C. 553.

E.O. 12291, Federal Regulation

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain an information collection requirement that requires the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2641

Conflicts of interests, Government employees.

Approved: January 8, 1992.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2641 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2641—[AMENDED]

1. The authority citation for part 2641 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978, secs. 402 and 404); 18 U.S.C. 207; E.O. 12674; 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Appendix A is amended by adding the text to read as follows:

Appendix A to 5 CFR Part 2641—Positions Exempted From 18 U.S.C. 207(c)

Pursuant to the provisions of 18 U.S.C. 207(c)(2)(C), each of the following positions is exempt from the provisions of 18 U.S.C. 207(c). All exemptions are effective as of the date indicated.

Agency: Securities and Exchange Commission.

Positions: Solicitor, Office of General Counsel (effective October 29, 1991); Chief Litigation Counsel, Division of Enforcement (effective October 29, 1991).

3. In appendix B, the introductory text is revised and the component listings are amended as set forth below:

A. Revising the listing for the Department of Commerce;

B. Revising the listing for the Department of Defense;

C. Revising the listing for the Department of Health and Human Services;

D. Adding in alphabetical order a listing for the Department of the Interior; and

E. Revising the listing (including the footnotes) for the Department of Justice:

The revisions and additions read as follows:

Appendix B to 5 CFR Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

Pursuant to the provisions of 18 U.S.C. 207(h), each of the following departments or agencies is determined, for purposes of 18 U.S.C. 207(c), to have within it distinct and separate components as set forth below. Except as otherwise indicated, all designations are effective as of January 1, 1991.

Parent: Department of Commerce
Components:
- Bureau of the Census
- Bureau of Export Administration (effective January 28, 1992)
- Economic Development Administration
- International Trade Administration
- Minority Business Development Administration
- National Oceanic and Atmospheric Administration
- National Telecommunications and Information Administration
- Patent and Trademark Office
- Technology Administration (effective January 28, 1992)
- United States Travel and Tourism Administration (effective January 28, 1992)

Parent: Department of Defense
Components:
- Department of the Air Force
- Department of the Army
- Department of the Navy
- Defense Information Systems Agency
- Defense Intelligence Agency
- Defense Logistics Agency
- Defense Mapping Agency
- Defense Nuclear Agency
- National Security Agency

* * * * *

Parent: Department of Health and Human Services
Components:
- Administration for Children and Families (effective January 28, 1992)
- Health Care Financing Administration
- Food and Drug Administration
- Public Health Service
- Social Security Administration

Parent: Department of the Interior
Components:[1]
- Bureau of Indian Affairs (effective January 28, 1992)
- Bureau of Land Management (effective January 28, 1992)
- Bureau of Mines (effective January 28, 1992)
- Bureau of Reclamation (effective January 28, 1992)
- Minerals Management Service (effective January 28, 1992)
- National Park Service (effective January 28, 1992)
- Office of Surface Mining (effective January 28, 1992)
- Office of Territorial and International Affairs (effective January 28, 1992)
- U.S. Fish and Wildlife Service (effective January 28, 1992)
- U.S. Geological Survey (effective January 28, 1992)

Parent: Department of Justice

[1] All designated components under the jurisdiction of a particular Assistant Secretary shall be considered a single component for purposes of determining the scope of 18 U.S.C. 207(c) as applied to senior employees serving on the immediate staff of that Assistant Secretary.

Components:
Antitrust Division
Bureau of Prisons (including Federal Prison Industries, Inc.)
Civil Division
Civil Rights Division
Community Relations Service
Criminal Division
Drug Enforcement Administration
Environment and Natural Resources Division
Executive Office for United States Attorneys [2] (effective January 28, 1992)
Executive Office for United States Trustees [3] (effective January 28, 1992)
Federal Bureau of Investigation
Foreign Claims Settlement Commission
Immigration and Naturalization Service
Independent Counsel
Office of Justice Programs
Office of the Pardons Attorney (effective January 28, 1992)
Offices of the United States Attorney (94) [4]
Offices of the United States Marshal (94) [5]
Offices of the United States Trustee (21) [6]
Tax Division
United States Parole Commission

* * * * *

[FR Doc. 92-1809 Filed 1-27-92; 8:45 am]
BILLING CODE 4345-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-156]

Black Stem Rust

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the black stem rust quarantine and regulations to require that the seed of certain barberry plants be produced only at properties where it has been verified that no wild or domesticated rust-susceptible barberry plants are growing at or within one-half mile of the property. This action is necessary to help delay and minimize infestations of black stem rust. We are also allowing the issuance of compliance agreements by States that are not protected areas or that do not encompass protected areas. This action is warranted to remove unnecessary restrictions on the issuance of compliance agreements.

EFFECTIVE DATE: February 27, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 645, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

Black stem rust is one of the most destructive plant diseases of small grains that is known to exist in the United States. The disease is caused by a fungus that reduces the quality and yield of wheat, oat, barley, and rye crops by robbing host plants of food and water. In addition to infecting small grains, the fungus lives on a variety of alternate host plants that are species of the genera *Berberis, Mahoberberis,* and *Mahonia*. The fungus is spread from host to host by wind-borne spores.

The black stem rust quarantine and regulations in 7 CFR part 301.38 *et seq.* (referred to below as the regulations) quarantine the conterminous 48 States and the District of Columbia and govern the interstate movement of certain plants of the genera *Berberis, Mahoberberis,* and *Mahonia,* also known as barberry plants. The species of these plants are categorized as either rust-resistant or rust-susceptible. Rust-resistant plants do not pose a risk of being infected by and spreading black stem rust; rust-susceptible plants do pose such a risk.

Currently, many small grain varieties are resistant to existing races of black stem rust. However, during the sexual stage of black stem rust organisms, spores from different black stem rust organisms can combine to produce entirely new hybrid races of black stem rust. Some of these hybrid races could successfully attack grain varieties that are not harmed by the "parent" black stem rust races. For this reason, an important factor in controlling infestations of black stem rust is the elimination of rust-susceptible host barberry plants. Additionally, the presence of rust-susceptible barberry plants can cause infestations to occur earlier in the year than if the plants were not present. These "early" infestations are especially damaging because they affect grains at a stage when the grains are most vulnerable to effects of black stem rust.

The regulations provide criteria for "protected areas." (Movement of regulated articles into or through protected areas is restricted.) Protected areas are those in which rust-susceptible plants of the genera *Berberis, Mahoberberis,* and *Mahonia* have been eradicated, and in which States conduct periodic inspections, as specified by the regulations, to ensure that rust-resistant nursery stock of those genera do not come into proximity to rust-susceptible plants that might become present in the area. The danger from rust-resistant barberry plants being in proximity to rust-susceptible plants is not that the rust-resistant plants will become hosts to black stem rust organisms capable of spreading. Rather, it is that the rust-susceptible plants could pollinate the rust-resistant plants, and the rust-resistant plants could then produce seeds that would be used to propagate rust-susceptible plants.

In a document published in the Federal Register on September 16, 1991 (56 FR 46737-46739, Docket Number 90-038), we proposed to revise the regulations to require that all seed used to propagate barberry plants in protected areas, and all seed used to propagate barberry plants that are certified rust-resistant for interstate movement into protected areas, be produced at properties where a State inspector has verified that no wild or domesticated rust-susceptible plants are growing at, or within one-half mile of, the property.

We also proposed to allow States that are not, or that do not encompass, protected areas to issue compliance agreements. Prior to the effective date of this final rule, the only States that may issue compliance agreements are those that are either protected areas or that encompass protected areas. In non-protected areas, we are responsible for issuing compliance agreements. However, this provision is unnecessarily restrictive, and there will be no increased risk of infestations of black stem rust if compliance agreements are issued by States that are not, or that do not encompass, protected areas.

The proposed rule as published contained two typographical errors. On September 25, 1991, a document was published in the Federal Register (FF; 56 48611) to correct these errors.

[2] The Executive Office for United States Attorneys shall not be considered separate from any Office of the United States Attorney for a judicial district, but only from other designated components of the Department of Justice.

[3] The Executive Office for United States Trustees shall not be considered separate from any Office of the United States Trustee for a region, but only from other designated components of the Department of Justice.

[4] Each Office of the United States Attorney for a judicial district shall be considered a separate component from each other such office. However, the Office of the United States Attorney for a judicial district shall not be considered separate from the Office of United States Marshal for the same judicial district.

[5] Each Office of the United States Marshal for a judicial district shall be considered a separate component from each other such office. However, the Office of the United States Marshal for a judicial district shall not be considered separate from the Office of United States Attorney for the same judicial district.

[6] Each Office of the United States Trustee for a region shall be considered a separate component from each other such office.

F

Rules and Regulations

Federal Register
Vol. 57, No. 252
Thursday, December 31, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2637

RIN 3209–AA14

Post-Employment Conflict of Interest Restrictions; Amendments

AGENCY: Office of Government Ethics.

ACTION: Final rule; amendments.

SUMMARY: Part 2637 of 5 CFR provides guidance concerning the post-employment restrictions set forth in the prior version of 18 U.S.C. 207 (1988) as they continue to apply to individuals who terminated Government service (or a "Senior" Government position) before January 1, 1991, the effective date of statutory amendments enacted by the Ethics Reform Act of 1989. Since no former employee who terminated service before that date could any longer be subject to the prior version of either 18 U.S.C. 207 (b)(ii) or (c), this rule amends part 2637 to delete certain information relating to these two statutory provisions.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Julia Loring Eirinberg, Office of Government Ethics, telephone (202/FTS) 523–5757, FAX (202/FTS) 523–6325.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

Since 1980, 5 CFR part 2637 (formerly 5 CFR part 737) has provided guidance concerning the post-employment conflict of interest restrictions of 18 U.S.C. 207. The statutory restrictions were substantially revised by the Ethics Reform Act of 1989, Public Law No. 101–194, 103 Stat. 1716, with technical amendments enacted by Public Law No. 101–280, 104 Stat. 149 (1990). Employees who terminated Government service prior to January 1, 1991, the effective date of the Ethics Reform Act amendments, remain subject to the previous version of 18 U.S.C. 207. As a consequence, the Office of Government Ethics is continuing to publish part 2637 as guidance concerning that version of the statute.

Two sections of the previous version of 18 U.S.C. 207, § 207(b)(ii) and 207(c), applied only to so-called "Senior Employees." Section 207(b)(ii) was a two-year restriction against aiding or assisting in representing any other person by personal presence at an appearance by another, commencing upon an employee's termination from a Senior Employee position. Section 207(c) was a one-year restriction against the official generally contacting his or her former agency. Some employees were automatically Senior Employees by virtue of their rate of pay or pay grade, while others were Senior Employees by virtue of occupying positions designated as "Senior" by the Director of the Office of Government Ethics. The list of designated positions was periodically revised and then published in part 2637, most recently as reflected in § 2637.216 of title 5 of the 1992 edition of the CFR.

For one year after the termination of Senior service, 18 U.S.C. 207(c) restricted a Senior Employee from making certain communications or appearances before the department or agency in which he or she formerly served. The Director of the Office of Government Ethics had authority to take action to designate certain statutory or administratively created components so that the scope of the representational bar would be limited to less than the whole of a department or agency. The various statutory components were last listed in § 2637.214 of the 1992 edition of title 5 of the CFR, while the various administratively created components were last listed in 5 CFR 2637.215 of that edition.

As noted above, the previous version of 18 U.S.C. 207 continues to apply to employees who terminated Government service (or Senior service) prior to January 1, 1991. Thus, for example, these individuals continue to be subject to the permanent restriction set forth in section 207(a) of the law. However, since no former Senior Employee who terminated senior service prior to that date could any longer be subject to the one-year or two-year bars as of January 1, 1993, the separate agency and Senior Employee listings in §§ 2637.214, 2637.215 and 2637.216 of the regulations are being deleted from the CFR effective that date. We are adding notes to the three sections that will briefly explain the reason for the deletions.

The Office of Government Ethics has published substantive guidance concerning the current Ethics Reform Act version of 18 U.S.C. 207 in part 2641 of this chapter. This guidance includes a new definition of "senior employee" and a listing of component designations for purposes of the new version of section 207(c).

We have chosen not to delete the substantive discussions of prior section 207 (b)(ii) and (c) of 18 U.S.C. (nor of the generally applicable official responsibility two-year bar of section 207(b)(i) which is also expiring) appearing in sections of part 2637, largely because part 2641 of this chapter does not yet set forth comprehensive guidance in relation to the present version of prior paragraphs (b)(i) (now (a)(2)) and (c) of 18 U.S.C. 207. To the extent that the underlying statutory provisions remain unchanged, part 2637 remains persuasive concerning the interpretation of the newer, currently effective version of 18 U.S.C. 207, including section 207 (a)(2) and (c). Also, at least for the present, we have determined that the discussion of section 207(b)(ii) in part 2637 should continue to be published for its historical value.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), as Director of the Office of Government Ethics, I find that good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to these revisions. The notice and delayed effective date are being waived because these amendments to the part 2637 regulations concern matters of agency organization, practice and procedure, and because they merely reflect the expiration of certain post-Government employment statutory restrictions.

E.O. 12291, Federal Regulation

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify that this regulation will not have a significant impact on a substantial number of small entities because it only affects certain former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2637

Conflict of interests, Government employees.

Approved: December 22, 1992.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble and pursuant to its authority under the Ethics in Government Act, 18 U.S.C. 207, and Executive Order 12674 as modified by Executive Order 12731, the Office of Government Ethics is amending part 2637 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2637—[AMENDED]

1. The authority citation for 5 CFR part 2637 continues to read as follows:

Authority: 5 U.S.C. appendixes; 18 U.S.C. 207 (1988).

Subpart B—Substantive Provisions

2. Sections 2637.214, 2637.215 and 2637.216 are revised to read as follows:

§ 2637.214 Separate statutory agencies: Designations.

Note: Part 2637 provides guidance concerning the prior version of 18 U.S.C. 207 (1988) as it continues to apply to individuals who terminated Government service (or a "Senior" Government position) before January 1, 1991. However, since no former "Senior Employee" who terminated service before that date could any longer be subject to the one-year restriction of section 207(c) of 18 U.S.C. as it existed prior to its amendment by the Ethics Reform Act of 1989, the listing of separate statutory agencies that previously appeared in § 2637.214 has been deleted.

§ 2637.215 Separate components of agencies or bureaus: Designations.

Note: Part 2637 provides guidance concerning the prior version of 18 U.S.C. 207 (1988) as it continues to apply to individuals who terminated Government service (or a "Senior" Government position) before January 1, 1991. However, since no former "Senior Employee" who terminated service before that date could any longer be subject to the one-year restriction of section 207(c) of 18 U.S.C. as it existed prior to its amendment by the Ethics Reform Act of 1989, the listing of separate components that previously appeared in § 2637.215 has been deleted.

§ 2637.216 "Senior Employee" Designations.

Note: Part 2637 provides guidance concerning the prior version of 18 U.S.C. 207 (1988) as it continues to apply to individuals who terminated Government service (or a "Senior" Government position) before January 1, 1991. However, since no former "Senior Employee" who terminated service before that date could any longer be subject to either the two-year restriction of section 207(b)(ii) or the one-year restriction of section 207(c) of 18 U.S.C. as they existed prior to their amendment by the Ethics Reform Act of 1989, the listing of "Senior Employee" positions that previously appeared in § 2637.216 has been deleted.

[FR Doc. 92-31753 Filed 12-30-92; 8:45 am]

BILLING CODE 6345-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 321

[Docket No. 91-038-4]

Importation of Potatoes From Canada; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: We are correcting four errors in a final rule which amended the regulations concerning the importation of potato plants and tubers from Canada. The rule was necessary to prevent the introduction of the necrotic strain of potato virus Y (PVY^n) into the United States. The final rule was published in the Federal Register and effective on November 24, 1992 (57 FR 55047–55054, Docket No. 91–038–3).

EFFECTIVE DATE: November 24, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. James Petit de Mange, Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8645.

§§ 321.2 and 321.9 [Corrected]

The following corrections in FR Doc. 92-28593, pages 55047–55054, read as follows:

1. On page 55053, third column, in § 321.2, definition of *Certified seed potatoes*, the word "six" is corrected to read "seven".

2. On page 55053, third column, in § 321.2, definition of *Foundation seed potatoes*, the word "five" is corrected to read "six".

3. On page 55054, first column, in § 321.9, paragraph (c) introductory text, the phrase "from New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec" is removed.

4. On page 55054, second column, in § 321.9, paragraph (d)(1), the words "level of" are added immediately before "1000 tubers".

Done in Washington, DC, this 28th day of December, 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-31862 Filed 12-30-92; 8:45 am]

BILLING CODE 3410-34-M

7 CFR Part 354

[Docket No. 92-148-1]

User Fees—Agricultural Quarantine and Inspection Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the user fee regulations by lowering the fees charged for certain agricultural quarantine and inspection services we provide in connection with the arrival at a port in the customs territory of the United States, or the preclearance or preinspection at a site outside the customs territory of the United States, of an international air passenger, commercial aircraft, or commercial vessel. We have determined that the inspection fees for international air passengers, commercial aircraft, and commercial vessels must be lowered to avoid collecting more revenue than needed to cover the costs of the services and, in the case of the international air passenger and commercial aircraft fees, to avoid exceeding a statutory cap on revenue collection. The lower fees will still be sufficient to recover the full costs of providing the inspection services.

DATES: Interim rule effective January 1, 1993. Consideration will be given only to comments received on or before February 1, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–148–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence

G

ing may not be delegated to any person other than the alternate designated agency ethics official described in § 2638.202(b).

PART 2637—REGULATIONS CONCERNING POST EMPLOYMENT CONFLICT OF INTEREST

Subpart A—General Provisions

Sec.

2637.101 Purpose and policy.
2637.102 Definitions.

Subpart B—Substantive Provisions

2637.201 Restrictions on any former Government employee's acting as representative as to a particular matter in which the employee personally and substantially participated.
2637.202 Two-year restriction on any former Government employee's acting as representative as to a particular matter for which the employee had official responsibility.
2637.203 Two-year restriction on a former senior employee's assisting in representing as to a matter in which the employee participated personally and substantially.
2637.204 One-year restriction on a former senior employee's transactions with former agency on a particular matter, regardless of prior involvement.
2637.205 Limitation of restrictions of 18 U.S.C. 207(c) to less than the whole of a department or agency.
2637.206 Exemption for scientific and technological information.
2637.207 Exemption for persons with special qualification in a technical discipline.
2637.208 Testimony and statements under oath or subject to penalty of perjury.
2637.209 Partners of present or former Government employees.
2637.210 Officials of a State; officials of corporations created by an Act of Congress and public international organizations.
2637.211 Standards and procedures for designating senior employee positions pursuant to 18 U.S.C. 207(d).
2637.212 Administrative enforcement proceedings.
2637.213 Effective date of restrictions.
2637.214 Separate statutory agencies: Designations.
2637.215 Separate components of agencies or bureaus: Designations.
2637.216 "Senior Employee" designations.

AUTHORITY: 5 U.S.C. appendixes; 18 U.S.C. 207 (1988).

SOURCE: 45 FR 7406, Feb. 1, 1980; 45 FR 9253, Feb. 12, 1980, unless otherwise noted. Redesignated at 54 FR 50231, Dec. 5, 1989.

NOTE: The post-employment conflict of interest restrictions of 18 U.S.C. 207 were substantially revised effective January 1, 1991, by the Ethics Reform Act of 1989, Pub. L. 101-194, 103 Stat. 1716, with technical amendments enacted by Pub. L. 101-280, 104 Stat. 149 (1990). The Office of Government Ethics has published substantive guidance for the executive branch concerning the amended version of 18 U.S.C. 207 in part 2641 of this subchapter. This part 2637 will continue to provide guidance concerning the previous version of section 207, which will continue to apply to individuals terminating Government service prior to January 1, 1991.

EDITORIAL NOTE: The following index of paragraphs is provided for the convenience of the reader:

Subpart A—General Provisions

Sec.

2637.101 Purpose and policy.
(a) Authority.
(b) Consultation with the Attorney General.
(c) Policy and limitations.
2637.102 Definitions.
(a) Statutory definitions.
(b) Interpretative definitions.

Subpart B—Substantive Provisions

2637.201 Restrictions on any former government employee's acting as representative as to a particular matter in which the employee personally and substantially participated.
(a) 18 U.S.C. 207(a).
(b) Representation.
(1) Attorneys and agents.
(2) Others.
(3) Appearances; communications made with intent to influence.
(4) Government visits to other premises.
(5) Elements of "influence" and potential controversy required.
(6) Assistance.
(7) Project responses not included.
(c) "Particular matter involving a specific party or parties".
(1) Specific matters vs. policy matters.
(2) Technical matters.
(3) Relationship of personal participation to specificity.
(4) The same particular matter must be involved.
(5) United States must be a party or have an interest.

(d) "Participate personally and substantially".
(1) Basic requirements.
(2) Participation on ancillary matters.
(3) Role of official responsibility in determining substantial participation.
(e) Agency responsibility in complex cases.
2637.202 Two-year restriction on any former government employee's acting as representative as to a particular matter for which the employee had official responsibility.
(a) 18 U.S.C. 207(b)(i).
(b) Official responsibility.
(1) Definition.
(2) Determining official responsibility.
(3) Ancillary matters and official responsibility.
(4) Knowledge of matter pending required.
(5) Self-disqualification.
(c) "Actually pending."
(d) Other essential requirements.
(e) Measurement of two-year restriction period.
2637.203 Two-year restriction on a former senior employee's assisting in representing as to a matter in which the employee participated personally and substantially.
(a) 18 U.S.C. 207(b)(ii).
(b) Limitation to "representational" assistance by "personal presence" at an appearance.
(c) Managerial and other off-scene assistance.
(d) Representational assistance.
(e) Measurement of restriction period.
(f) Other essential requirements.
(g) General examples.
2637.204 One-year restriction on a former senior employee's transactions with former agency on a particular matter, regardless of prior involvement.
(a) 18 U.S.C. 207(c).
(b) Transactions exempted from 18 U.S.C. 207(c).
(c) No prior involvement required.
(d) Specific parties unnecessary.
(e) Element of controversy or influence required.
(f) Agency activity or interest in matter.
(g) Application or proposals for funding of research.
(h) Personal matters.
(i) Statements based on special knowledge.
(j) Measurement of one-year restriction period.
2637.205 Limitation of restrictions of 18 U.S.C. 207(c) to less than the whole of a department or agency.
(a) Authority.
(b) Distinctions between 18 U.S.C. 207(e) and 207(d)(1)(C).
(c) Separate Statutory Components.
(1) Procedure.
(2) Standards.
(3) Effect of designation.
(d) Separate nonstatutory components.
(1) Procedure.
(2) Standards.
(3) Effect of determination.
2637.206 Exemption for scientific and technological information.
(a) Exemption.
(b) Necessary information.
(c) Intent to influence.
(d) Expert testimony.
(e) Agency responsibility for procedures.
2637.207 Exemption for persons with special qualifications in a technical discipline.
(a) Applicability.
(b) When appropriate.
(c) Certification authority.
(d) Agency registry.
2637.208 Testimony and statements under oath or subject to penalty of perjury.
(a) Statutory basis.
(b) Applicability.
(c) Statements under penalty of perjury.
2637.209 Partners of present or former government employees.
(a) Scope.
(b) Imputation.
2637.210 Officials of a state; officials of corporations created by an act of Congress and public international organizations.
2637.211 Senior employee designations.
(a) Definitions.
(b) Designation procedures.
(1) Positions at GS–17 and 18 level, SES and pay grades 0–7 and 0–8.
(2) Standards for designation and exemption.
(3) Senior Executive Service.
(4) "Rate of pay".
(c) Differential designation.
(d) Fair notice of designation.
(e) "Acting" or temporary positions.
(f) Special Government Employee.
(g) Publication.
(h) Computation of time.
(i) Position Shifting.
(j) Revocation of designations.
2637.212 Administrative enforcement proceedings.
(a) Basic Procedures.
(1) Delegation.
(2) Initiation of administative disciplinary hearing.
(3) Adequate notice.
(4) Presiding official.
(5) Time, date and place.
(6) Hearing rights.
(7) Burden of proof.
(8) Hearing decision
(9) Administrative sanctions.
(10) Judicial review.
(11) Consultation and review.
2637.213 Effective date of restrictions.
(a) Persons affected.

(b) Fair notice of substantive changes.
2637.214 *Separate statutory agencies: Designations.*
2637.215 *Separate components of agencies or bureaus: Designations.*
2637.216 *"Senior Employee" designations.*

Subpart A—General Provisions

§ 2637.101 Purpose and policy.

(a) *Authority.* Section 401(a) of the Ethics in Government Act of 1978 (the "Act"), as amended by Public Law 100–598 (Nov. 3, 1988), established the Office of Government Ethics ("OGE") as a separate agency in the executive branch, effective October 1, 1989. (OGE was formerly a part of the Office of Personnel Management ("OPM")). Sections 402 (a) and (b) of the Act, as amended, provide that the Director of the Office of Goverment Ethics ("the Director") shall provide, in consultation with OPM, overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency as defined in section 105 of title 5, United State Code, and shall propose, in consultation with the Attorney General and OPM, rules and regulations to be promulgated by the President or by OGE pertaining to conflicts of interest and ethics in the executive branch. The purpose of this part is to issue regulations prepared by the Director which give content to the restrictions on post employment activity established by title V of the Act (18 U.S.C. 207) for administrative enforcement with respect to former officers and employees of the executive branch; generally to guide agencies in exercising the administrative enforcement authority reflected in section 18 U.S.C. 207(j); to set forth the procedures to be employed in making certain determinations and designations pursuant to the Act; and to provide guidance to individuals who must conform to the law. Criminal enforcement of the provisions of 18 U.S.C. 207 remains the exclusive responsibility of the Attorney General.

(b) *Consultation with the Attorney General.* In proposing these regulations, the Director consulted with the Attorney General as to the content of regulations governing substantive prohibitions as well as other matters. The Attorney General has advised that such regulations are consistent with his opinion as to the interpretation of the Act.

(c) *Policy and limitations.* These regulations bar certain acts by former Government employees which may reasonably give the appearance of making unfair use of prior Government employment and affiliations.

(1) When a former Government employee who has been involved with a particular matter decides to act as the representative for another person on that matter, such "switching of sides" undermines confidence in the fairness of proceedings and creates the impression that personal influence, gained by Government affiliation, is decisive.

(2) Similarly, when a former high-level employee assists in representing another by personal presence at an appearance before the Government regarding a matter which is in dispute, such assistance suggests an attempt to use personal influence and the possible unfair use of information unavailable to others. Different considerations are involved, however, with respect to assistance given as part of customary supervisory participation in a project funded by a Government contract or grant, since a former employee's knowledge may benefit the project and thus the Government, and regular communications with associates may properly be regarded as inherent in managerial responsibility. Such assistance, when not rendered by personal presence during an appearance, is not covered by the statute.

(3) When a former Senior Employee returns to argue a particular matter to the employee's former agency in the period immediately following the termination of official employment, it appears that Government-based relationships are being used for private ends.

(4) Former officers and employees may fairly be required to avoid such activities in the circumstances specified by statute and in these regulations.

(5) The provisions of 18 U.S.C. 207 do not, however, bar any former Government employee, regardless of rank, from employment with any private or public employer after Government

service. Nor do they effectively bar employment even on a particular matter in which the former Government employee had major official involvement except in certain circumstances involving persons engaged in professional advocacy. Former Government employees may be fully active in high-level supervisory positions whether or not the work is funded by the United States and includes matters in which the employee was involved while employed by the Government. The statutory provisions are not intended to discourage the movement of skilled professionals in Government, to and from positions in industry, research institutions, law and accounting firms, universities and other major sources of expertise. Such a flow of skills can promote efficiency and communication between the Government and private activities, and it is essential to the success of many Government programs. Instead, only certain acts which are detrimental to public confidence in the Government are prohibited.

(6) Departments and agencies have primary responsibility for the administrative enforcement of the post employment restrictions found in the Act. The Department of Justice may initiate criminal enforcement in cases involving aggravated circumstances; agency heads are required to report substantiated allegations of violations of 18 U.S.C. 207 to the Department of Justice and the Director, OGE. It is essential that title V of the Act be enforced so as to advance its objectives, which include improvement in government efficiency, equal treatment for equal claims, greater public confidence in the integrity of their government, elimination of the use of public office for private gain, and securing the integrity of the government's policy-making processes. Departments and agencies should avoid enforcement actions that do not advance these objectives but instead frustrate the Government's ability to employ the skilled persons who are needed to make the programs of the Federal Government succeed. Special attention should be given to the need to preserve the free flow of expertise, especially in scientific, technological and other technical areas, from private activities to the government.

(7) The examples contained in these regulations are intended to give guidance, but are illustrative, not comprehensive. Each agency may provide additional illustration and guidance in its own regulations, consistent with that contained herein, in order to address specific problems arising in the context of a particular agency's operations.

(8) Agencies have the responsibility to provide assistance promptly to former Government employees who seek advice on specific problems. The Office of Government Ethics will provide advice, promptly, upon request, to designated agency ethics officials in such situations, but will first coordinate with the Department of Justice on unresolved or difficult issues.

(9) These regulations do not supplant restrictions that may be contained in laws other than 18 U.S.C. 207 and do not incorporate restrictions contained in the code of conduct of a profession of which an employee may be a member.

[45 FR 7406, Feb. 1, 1980; 45 FR 9253, Feb. 12, 1980, as amended at 49 FR 33118, Aug. 21, 1984; 50 FR 1203, Jan. 10, 1985. Redesignated at 54 FR 50230, Dec. 5, 1989; 55 FR 27179, July 2, 1990; 55 FR 27933, July 6, 1990]

§ 2637.102 Definitions.

(a) *Statutory definitions.* The following are defined terms which largely repeat portions of the text of the statute. They are set out here to permit a simplified presentation of statutory requirements in the regulations which follow. Other definitions, which supplement the statutory language, are listed in paragraph (b) of this section and are set forth in detail in the substantive regulations.

(1) *United States* or *Government* means any department, agency, court, court-martial, or any civil, military or naval commission of the United States, the District of Columbia, or any officer or employee thereof.

(2) *Agency* includes an Executive Department, a Government corporation and an independent establishment of the executive branch, which includes

an independent commission. (See 18 U.S.C. 6.)

(3) *Government Employee* includes any officer or employee of the Executive Branch (as defined in 18 U.S.C. 202 and, e.g., 5 U.S.C. 2104 and 2105); those appointed or detailed under 5 U.S.C. 3374, and a Special Government Employee, but shall not include an individual performing services for the United States as an independent contractor under a personal service contract.

(4) *Former Government Employee* means one who was, and is no longer, a Government employee.

(5) *Special Government Employee* means an officer or employee of an agency who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of three hundred and sixty five consecutive days, temporary duties either on a full time or intermittent basis (18 U.S.C. 202).

(6) *Senior Employee* means an officer or employee named in, or designated by the Director pursuant to, section 207(d) of title 18 U.S.C. to whom 207(b)(ii) and (c) shall apply (See § 2637.211 of this part.)

(7) *Particular Government matter involving a specific party* means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest.

(b) *Interpretative definitions.T1 Other terms defined and interpreted in the substantive regulations are:*

(1) *Acting as Agent or Attorney:* (See § 2637.201(b).)

(2) *Actually Pending:* (See § 2637.202(c).)

(3) *Communicating with Intent to Influence:* (See § 2637.201(b).)

(4) *Direct and Substantial Interest:* (See § 2637.204(f).)

(5) *Participate Personally and Substantially:* (See § 2637.201(d).)

(6) *Particular Matter Involving a Specific Party or Parties:* (See § 2637.201(c).)

(7) *Particular Matter (without parties):* (See § 2637.204(d).)

(8) *Official Responsibility:* (See § 2637.202(b).)

(9) *Rate of Pay:* (See § 2637.211(b)(4).)

Subpart B—Substantive Provisions

§ 2637.201 Restrictions on any former Government employee's acting as representative as to a particular matter in which the employee personally and substantially participated.

(a) *Basic prohibition of 18 U.S.C. 207(a).* No former Government employee, after terminating Government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Government matter involving a specific party, (3) in which matter such employee participated personally and substantially as a Government employee.

(b) *Representation: Acting as agent or attorney, or other representative in an appearance, or communicating with intent to influence—* (1) *Attorneys and agents.* The target of this provision is the former employee who participates in a particular matter while employed by the Government and later "switches sides" by representing another person on the same matter.

[NOTE: The examples in these regulations do not incorporate the special statutory restrictions on Senior Employees, except where the terms "Senior Employee" or "Senior" are expressly used.]

Example 1: A lawyer in the Department of Justice personally works on an antitrust case involving Q Company. After leaving the Department, he is asked by Q Company to represent it in that case. He may not do so.

(2) *Others.* The statutory prohibition covers any other former employee, including managerial and technical personnel, who represents another person in an appearance or, by other communication, attempts to influence the

Government concerning a particular matter in which he or she was involved. For example, a former technical employee may not act as a manufacturer's promotional or contract representative to the Government on a particular matter in which he or she participated. Nor could such employee appear as an expert witness against the Government in connection with such a matter. (See § 2637.208 for specific rules relating to expert witnesses.)

(3) *Appearances; communications made with intent to influence.* An appearance occurs when an individual is physically present before the United States in either a formal or informal setting or conveys material to the United States in connection with a formal proceeding or application. A communication is broader than an appearance and includes for example, correspondence, or telephone calls.

Example 1: An appearance occurs when a former employee meets with an agency employee personally to discuss a matter; or when he submits a brief in an agency administrative proceeding in his own name.

Example 2: A former employee makes a telephone call to a present employee to discuss a particular matter that is not the subject of a formal proceeding. She has made a communication.

(4) *Government visits to others premises.* Neither a prohibited appearance nor communication occurs when a former Government employee communicates with a Government employee who, at the instance of the United States, visits or is assigned to premises leased to, or owned or occupied by, a person other than the United States which are or may be used for performance under an actual or proposed contract or grant, when such communication concerns work performed or to be performed and occurs in the ordinary course of evaluation, administration, or performance of the actual or proposed contract or grant.

(5) *Elements of "influence" and potential controversy required.* Communications which do not include an "intent to influence" are not prohibited. Moreover, acting as agent or attorney in connection with a routine request not involving a potential controversy is not prohibited. For example, the following are not prohibited: a question by an attorney as to the status of a particular matter; a request for publicly available documents; or a communication by a former employee, not in connection with an adversary proceeding, imparting purely factual information. (See also § 2637.204(d) of this part.)

Example 1: A Government employee, who participated in writing the specifications of a contract awarded to Q Company for the design of certain education testing programs, joins Q Company and does work under the contract. She is asked to accompany a company vice-president to a meeting to state the results of a series of trial tests, and does so. No violation occurs when she provides the information to her former agency. During the meeting a dispute arises as to some terms of the contract, and she is called upon to support Q Company's position. She may not do so. If she had reason to believe that the contractual dispute would be a subject of the meeting, she should not have attended.

(6) *Assistance.* A former employee is not prohibited from providing in-house assistance in connection with the representation of another person.

Example 1: A Government employee administered a particular contract for agricultural research with Q Company. Upon termination of her Government employment, she is hired by Q Company. She works on the matter covered by the contract, but has no direct contact with the Government. At the request of a company vice-president, she prepares a paper describing the persons at her former agency who should be contacted and what should be said to them in an effort in increase the scope of funding of the contract and to resolve favorably a dispute over a contract clause. She may do so.

(7) *Project responses not included.* In a context not involving a potential controversy involving the United States no finding of a "intent to influence" shall be based upon whatever influential effect inheres in an attempt to formulate a meritorious proposal or program.

Example 1: The employee of Q Company in the previous example is asked to design an educational testing program, which she does and transmits it to the Government. This is not prohibited despite the fact that her well-designed program may be inherently influential on a question of additional

funding under the contract. She may not argue for its acceptance.

(c) *"Particular matter involving a specific party or parties"*—(1) *Specific matters vs. policy matters.* The prohibitions of subsections (a) and (b) of 18 U.S.C. 207, are based on the former Government employee's prior participation in or responsibility for a "judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties" in which the United States is a party or has a direct and substantial interest. Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identifiable parties. Rulemaking, legislation, the formulation of general policy, standards or objectives, or other action of general application is not such a matter. Therefore, a former Government employee may represent another person in connection with a particular matter involving a specific party even if rules or policies which he or she had a role in establishing are involved in the proceeding.

Example 1: A Government employee formulated the policy objectives of an energy conservation program. He is not restricted from later representing a university which seeks a grant or contract for work emerging from such a program.

Example 2: A Government employee reviews and approves a specific city's application for Federal assistance for a renewal project. After leaving Government service, she may not represent the city in relation to that project.

Example 3: An employee is regularly involved in the formulation of policy, procedures and regulations governing departmental procurement and acquisition functions. Participation in such activities does not restrict the employee after leaving the Government as to particular cases involving the application of such policies, procedures, or regulations.

Example 4: An employee of the Office of Management and Budget participates substantially on the merits of a decision to reduce the funding level of a program, which has the effect of reducing the amount of money which certain cities receive to conduct youth work programs. After leaving the Government she may represent any of the cities in securing funds for its youth program, since her participation was in connection with a program, not a particular matter involving specific parties.

Example 5: An agency attorney participates in drafting a standard form contract and certain "standard terms and clauses" for use in future contracts. He is not thereafter barred from representing a person in a dispute involving the application of such a "standard term or clause" in a particular contract in which he did not participate as a Government employee.

(2) *Technical matters.* In connection with technical work, participation in projects generally involving one or more scientific or engineering concepts, in feasibility studies, or in proposed programs prior to the formulation of a contract will not restrict former Government employees with respect to a contract or specific programs entered into at a later date.

Example 1: A Government employee participates significantly in formulating the "mission need" of a project pursuant to OMB Circular No. A-109, and the award of a contract to Z Company, the purpose of which is to propose alternative technical approaches. He is not barred, after leaving Government service, from representing Q Company which later seeks a contract to manufacture one of the systems suggested by the Z Company.

Example 2: A Government employee, who has worked for years on the design of a new satellite communications system, joins C Company. Later, the Government issues a "request for proposals" ("rfp") to construct the new system, which is circulated generally to industry. The employee proposes to act as C Company's representative in connection with its anticipated proposals for the contract. He may do so. The satellite contract became a particular matter when the rfp was being formulated; it would ordinarily not become one involving a specific party or parties until initial proposals or indications of interest therein by contractors were first received. Moreover, if the employee's work for C Company were limited to the formulation and communication of a proposal in response to the rfp, it would not be prohibited to the extent it involved a communication for the purpose of furnishing scientific or technological information to the Government, exempt under 18 U.S.C. 207(f). See § 2637.206 below. (See paragraph (3) below as to a case where the employee's own participation may cause a different result.)

(3) *Relationship of personal participation to specificity.* In certain cases,

whether a matter should be treated as a "particular matter involving specific parties" may depend on the employee's own participation in events which give particularity and specificity to the matter in question. For example, if a Government employee (i) personally participated in that stage of the formulation of a proposed contract where significant requirements were discussed and one or more persons was identified to perform services thereunder and (ii) actively urged that such a contract be awarded, but the contract was actually awarded only after the employee left, the contract may nevertheless be a particular matter involving a specific party as to such former Government employee.

Example 1: A Government employee advises her agency that it needs certain work done and meets with private firm X to discuss and develop requirements and operating procedures. Thereafter, the employee meets with agency officials and persuades them of the need for a project along the lines discussed with X. She leaves the Government and the project is awarded by other employees to firm X. The employee is asked by X to represent it on the contract. She may not do so.

(4) *The same particular matter must be involved.* The requirement of a "particular matter involving a specific party" applies both at the time that the Government employee acts in an official capacity and at the time in question after Government service. The same particular matter may continue in another form or in part. In determining whether two particular matters are the same, the agency should consider the extent to which the matters involve the same basic facts, related issues, the same or related parties, time elapsed, the same confidential information, and the continuing existence of an important Federal interest.

Example 1: A Government employee was substantially involved in the award of a long-term contract to Z Company for the development of alternative energy sources. Six years after he terminates Government employment, the contract is still in effect, but much of the technology has changed as have many of the personnel. The Government proposes to award a "follow on" contract, involving the same objective, after competitive bidding. The employee may represent Q Company in its proposals for the follow-on contract, since Q Company's proposed contract is a different matter from the contract with Z Company. He may also represent Z Company in its efforts to continue as contractor, if the agency determines on the basis of facts referred to above, that the new contract is significantly different in its particulars from the old. The former employee should first consult his agency and request a written determination before undertaking any representation in the matter.

Example 2: A Government employee reviewed and approved certain wiretap applications. The prosecution of a person overheard during the wiretap, although not originally targeted, must be regarded as part of the same particular matter as the initial wiretap application. The reason is that the validity of the wiretap may be put in issue and many of the facts giving rise to the wiretap application would be involved. *Other examples:* See § 2637.201(b)(1), Example 1, and (c), Example 2.

(5) *United States must be a party or have an interest.* The particular matter must be one in which the United States is a party, such as in a judicial or administrative proceeding or a contract, or in which it has a direct and substantial interest. The importance of the Federal interest in a matter can play a role in determining whether two matters are the same particular matter.

Example 1: An attorney participated in preparing the Government's antitrust action against Z Company. After leaving the Government, she may not represent Z Company in a private antitrust action brought against it by X Company on the same facts involved in the Government action. Nor may she represent X Company in that matter. The interest of the United States in preventing both inconsistent results and the appearance of impropriety in the same factual matter involving the same party, Z Company, is direct and substantial. However, if the Government's antitrust investigation or case is closed, the United States no longer has a direct and substantial interest in the case.

Example 2: A member of a Government team providing technical assistance to a foreign country leaves and seeks to represent a private contractor in making arrangements with the Government to perform the same service. The proposed new contract may or may not be considered a separate matter, depending upon whether the United States has a national interest in maintaining the original contract. The agency involved must

be consulted by the former employee before the representation can be undertaken.

(d) *"Participate personally and substantially"*—(1) *Basic requirements.* The restrictions of section 207(a) apply only to those matters in which a former Government employee had "personal and substantial participation," exercised "through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise." To participate "personally" means directly, and includes the participation of a subordinate when actually directed by the former Government employee in the matter. "Substantially," means that the employee's involvement must be of significance to the matter, or form a basis for a reasonable appearance of such significance. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participation in a critical step may be substantial. It is essential that the participation be related to a "particular matter involving a specific party." (See paragraph (c) of this section.) (See also § 2637.203(f) of this part.)

Example 1: If an officer personally approves the departmental budget, he does not participate substantially in the approval of all items contained in the budget. His participation is substantial only in those cases where a budget item is actually put in issue. Even then, the former Government employee is not disqualified with respect to an item if it is a general program rather than a particular matter involving a specific party. The former Government employee may, however, have official responsibility for such matters. (See § 2637.202(b).)

Example 2: A Government lawyer is not in charge of, nor has official responsibility for a particular case, but is frequently consulted as to filings, discovery, and strategy. Such an individual has personally and substantially participated in the matter.

(2) *Participation on ancillary matters.* An employee's participation on subjects not directly involving the substantive merits of a matter may not be "substantial," even if it is time-consuming. An employee whose responsibility is the review of a matter solely for compliance with administrative control or budgetary considerations and who reviews a particular matter for such a purpose should not be regarded as having participated substantially in the matter, except when such considerations also are the subject of the employee's proposed representation. (See § 2637.202(b)(3) of this part.) Such an employee could theoretically cause a halt in a program for noncompliance with standards under his or her jurisdiction, but lacks authority to initiate a program or to disapprove it on the basis of its substance.

(3) *Role of official responsibility in determining substantial participation.* "Official responsibility" is defined in § 2637.202(b)(1). "Personal and substantial participation" is different from "official responsibility." One's responsibility may, however, play a role in determining the "substantiality" of an employee's participation. For example, ordinarily an employee's forbearance on a matter is not substantial participation. If, however, an employee is charged with responsibility for review of a matter and action cannot be undertaken over his or her objection, the result may be different. If the employee reviews a matter and passes it on, his or her participation may be regarded as "substantial" even if he or she claims merely to have engaged in inaction.

(e) *Agency responsibility in complex cases.* In certain complex factual cases, the agency with which the former Government employee was associated is likely to be in the best position to make a determination as to certain issues, for example, the identity or existence of a particular matter. Designated agency ethics officials should provide advice promptly to former Government employees who make inquiry on any matter arising under these regulations.

§ 2637.202 Two-year restriction on any former Government employee's acting as representative as to a particular matter for which the employee had official responsibility.

(a) *Basic prohibition of 18 U.S.C. 207(b)(i).* No former Government employee, within two years after terminating employment by the United States, shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Government matter involving a specific party (3) if such matter was actually pending under the employee's responsibility as an officer or employee within period of one year prior to the termination of such responsibility.

(b) *"Official responsibility"*—(1) *Definition.* "Official responsibility" is defined in 18 U.S.C. 202 as, "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government actions."

(2) *Determining official responsibility.* Ordinarily, the scope of an employee's "official responsibility" is determined by those areas assigned by statute, regulation, Executive Order, job description or delegation of authority. All particular matters under consideration in an agency are under the "official responsibility" of the agency head, and each is under that of any intermediate supervisor having responsibility for an employee who actually participates in the matter within the scope of his or her duties.

(3) *Ancillary matters and official responsibility.* "Administrative" authority as used in the foregoing definition means authority for planning, organizing and controlling matters rather than authority to review or make decisions on ancillary aspects of a matter such as the regularity of budgeting procedures, public or community relations aspects, or equal employment opportunity considerations. Responsibility for such an ancillary consideration does not constitute responsibility for the particular matter, except when such a consideration is also the subject of the employee's proposed representation.

Example 1: An agency's comptroller would not have official responsibility for all programs in the agency, even though she must review the budget, and all such programs are contained in the budget.

Example 2: Within two years after terminating employment, an agency's former comptroller is asked to represent Q Company in a dispute arising under a contract which was in effect during the comptroller's tenure. The dispute concerns an accounting formula, under the contract, a matter as to which a subordinate division of the comptroller's office was consulted. She may not represent Q Company on this matter.

(4) *Knowledge of matter pending required.* In order for a former employee to be barred from representing another as to a particular matter, he or she need not have known, while employed by the Government, that the matter was pending under his or her official responsibility. However, the former employee is not subject to the restriction unless at the time of the proposed representation of another, he or she knows or learns that the matter had been under his or her responsibility. Ordinarily, a former employee who is asked to represent another on a matter will become aware of facts sufficient to suggest the relationship of the prior matter to his or her former agency. If so, he or she is under a duty to make further inquiry, including direct contact with an agency's designated ethics official where the matter is in doubt.

(5) *Self-disqualification.* A former employee cannot avoid the restrictions of this section on the ground by self-disqualification with respect to a matter for which he or she otherwise had official responsibility. However, self-disqualification is effective to eliminate the restriction of section 207(a).

(c) *"Actually pending."* "Actually pending" means that the matter was in fact referred to or under consideration by persons within the employee's area of responsibility, not that it merely could have been.

Example 1: A staff lawyer in a department's Office of General Counsel is consulted by procurement officers on the correct resolution of a contractual matter involving Q Company. The lawyer renders an opinion resolving the question. The same legal question arises later in several contracts with other companies, but none of the disputes with such companies is referred to the Office of the General Counsel. The General Counsel has official responsibility for the determination of the Q Company matter. The other matters were never "actually pending" under that responsibility, although as a theoretical matter, such responsibility extended to all legal matters within the department.

(d) *Other essential requirements.* All other requirements of the statute must be met before the restriction on representation applies. The same considerations apply in determining the existence of a "particular matter involving a specific party," a representation in an "appearance," or "intent to influence," and so forth as set forth under § 2637.201 of this part.

Example 1: During her tenure as head of an agency, an officer's subordinates undertook major changes in agency enforcement standards involving occupational safety. Eighteen months after terminating Government employment, she is asked to represent Z Company which believes it is being unfairly treated under the enforcement program. The Z Company matter first arose on a complaint filed after the agency head terminated her employment. She may represent Z Company because the matter pending under her official responsibility was not one involving "a specific party." (Moreover, the time-period covered by 18 U.S.C. 207(c) has elapsed.)

(e) *Measurement of two-year restriction period.* The statutory two-year period is measured from the date when the employee's responsibility in a particular area ends, not from the termination of Government service, unless the two occur simultaneously. The prohibition applies to all particular matters subject to such responsibility in the one-year period before termination of such responsibility.

Example 1: The Director, Import/Export Division of A Agency retires after 26 years of service and enters private industry as a consultant. He will be restricted for two years with respect to all matters which were actually pending under his official responsibility in the year before his retirement.

Example 2: An employee transfers from a position in A Agency to a position in B Agency, and she leaves B Agency for private employment 9 months later. In 15 months she will be free of restriction insofar as matters which were pending under her responsibility in A Agency in the year before her transfer. She will be restricted for two years in respect of B Agency matters which were pending in the year before her departure for private employment.

§ 2637.203 Two-year restriction on a former senior employee's assisting in representing as to a matter in which the employee participated personally and substantially.

(a) *Basic prohibition of 18 U.S.C. 207(b)(ii).* No former Senior Employee (see § 2637.102(a)(6)), within two years after terminating employment by the United States, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person by personal presence at any formal or informal appearance, (1) before the United States, (2) in connection with any particular Government matter involving a specific party, (3) in which matter he or she participated personally and substantially.

(b) *Limitation to "representational" assistance by "personal presence" at an appearance.* Section 207(b)(ii) is limited to assistance "in representing" another person by "personal presence" at an "appearance" before the United States. Different in scope from sections 207(a) and 207(b)(i), it does not apply to assistance in connection with an oral or written communication made with an intent to influence which does not involve an appearance. Nor does it bar assistance in preparation for either a formal or informal personal appearance or an appearance by written submission in a formal proceeding where the former employee is not personally present before the Government or a Government employee. The provision is designed to prevent the former Senior Employee from playing any auxiliary role during a negotiation proceeding or similar transaction with the Government so that he or she does not appear to be lending personal influence to the resolution of a matter and cannot do so in fact.

Example 1: A former Senior Employee makes suggestions as to the content of a letter to be sent to the Government on a matter in which he had participated. No violation occurs.

(c) *Managerial and other off-scene assistance.* The statute does not prohibit a former Senior Employee's advice and assistance to his or her organization's representatives which does not involve his or her personal presence at an appearance before the Government. The former Senior Employee's preparation of documents to be presented in any formal or informal proceeding does not constitute personal presence at an appearance, even where submission of such a document might technically constitute an appearance.

Example 1: A former Senior Employee attends a hearing on a matter in which she had participated personally and substantially while in the Government. She speaks with the representative of a private party during the hearing. A violation occurs if the former Senior Employee lends assistance to the representative in that conversation.

Example 2: A Senior Justice Department lawyer personally works on an antitrust case against Z Company. After leaving the Department, she is asked to discuss legal strategy with lawyers representing Z Company on that same antitrust case, to write portions of a brief and to direct the research of the staff working on the case. Any such aid would not be prohibited by the statute, but would likely be prohibited by professional disciplinary rules.

(d) *Representational assistance.* The statute seeks to prevent a former Senior Employee from making unfair use of his or her prior governmental position by prohibiting all forms of assistance in the representation of another when personally present at an appearance, including giving advice as to how the representation in an appearance should be conducted, supplying information, participating in drafting materials, or dealing with forensic or argumentative matters (such as testimony, methods of persuasion, or strategy of presentation).

(e) *Measurement of restriction period.* The statutory two-year period is measured from the date of termination of employment in the Senior Employee position held by the former employee when he or she participated personally and substantially in the matter involved. (cf. § 2637.202(e))

(f) *Other Essential Requirements.* All conditions of the statutory prohibition must be met. Specifically, the former employee, (1) must have been a "Senior Employee," (2) who "participated personally and substantially" (See § 2637.201(d) of this part) in (3) a "particular matter involving a specific party." (See subpart § 2637.201(c) of this part.)

(g) *General Examples:*

Example 1: A Senior Federal Trade Commission Employee, an economist by profession, participates in an investigation involving X Company, and a proceeding is commenced against X Company based on the investigation. After leaving the Commission, he offers to serve as a consultant to the lawyers for X Company on certain economic matters involved in the proceeding. He attends the proceeding and at the close of each day, meets in the lawyers' office to advise them. Such conduct violates the statute.

Example 2: A Senior Employee of the Department of the Treasury participates in a number of projects with universities and financial research institutions funded by Government grants. After leaving the Government, she becomes dean of a graduate school of business which performs work under a number of such grants. She may, in the discharge of her duties, supervise research and advise as to how funds under such a contract should be allocated, whether or not these matters are, as is likely, communicated to her former Department by the graduate school's representatives. (See § 2637.204.)

Example 3: A Senior Defense Department official participated personally and substantially in a contract award to F Company for fighter planes. After leaving the Department, the former official goes to work for F Company. Subsequently, F Company desires to renegotiate prices and a pension provision on the fighter plane contract, matters in which dispute is anticipated. The former official could not attend a meeting with Government employees at which such matters will be discussed and give assistance to those representing F Company in the negotiations. He could generally render advice as long as he remained absent from the negotiations.

Example 4: A Senior Justice Department lawyer participated in an antitrust case against Q Company, which is represented by Y law firm. Immediately after leaving the Department, she goes to work with Y law firm, and assists at a trial representing Q Company in a different antitrust case, not

involving the allegations in the Government case. Such assistance would not be barred because it does not occur in connection with the same particular matter.

Example 5: A Senior Employee of the Department of Health and Human Services leaves to take a university position. The former official's new duties include various HHS contracts which the university holds. Some of the contracts were awarded by a division within HHS which was under her official responsibility. She is not barred from assistance in negotiations with respect to such contracts, because the restriction applies only to those matters in which she had participated personally and substantially, not to those matters for which she had official responsibility. Note, however, that any participation by her as a representative would be barred by 18 U.S.C. 207(b)(i) as described in § 2637.202 of this part. (But see § 2637.204.)

Example 6: A Senior scientist with the Food and Drug Administration was personally and substantially involved in a licensing proceeding concerning a specific drug. After leaving the FDA, he is employed by the manufacturer of the drug. There he engages in research, indicating that the drug is safe and effective, which his employer later presents to FDA in connection with the proceeding. He assists during this presentation. Such assistance would normally be restricted but may be allowed to the extent that the former official is furnishing scientific information to the Government. (See 18 U.S.C. 207(f) and § 2637.206 of this part.)

Example 7: A former Senior Employee of the Federal Communications Commission leaves the agency to join a graduate school faculty. In one of his courses, which from time to time includes Government employees, he discusses, unfavorably to the Commission, a specific licensing case in which he was personally and substantially involved. The restriction does not apply because the conduct does not occur in connection with any representational activities.

§ 2637.204 One-year restriction on a former senior employee's transactions with former agency on a particular matter, regardless of prior involvement.

(a) *Basic prohibition of 18 U.S.C. 207(c).* For a period of one year after terminating employment by the United States, no former Senior Employee (other than a special Government employee who serves for fewer than sixty days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise represent, anyone in any formal or informal appearance before, or with the intent to influence, make any written or oral communication on behalf of anyone to (1) his or her former department or agency, or any of its officers or employees, (2) in connection with any particular Government matter, whether or not involving a specific party, which is pending before such department or agency, or in which it has a direct and substantial interest.

(b) *Transactions exempted from the basic prohibition of 18 U.S.C. 207(c).* The prohibition set forth above shall not apply to an appearance, a communication, or representation by a former Senior Employee, who is:

(1) An elected official of a State or local government, acting on behalf of such government, or

(2) Whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital or organization

Example 1: A former Senior Employee of the Federal Highway Administration is appointed to the position of Secretary of Transportation for the State of Kansas. He would not be prohibited from transacting business with his former agency concerning new matters on behalf of the State. He would, however, be restricted as to 207(a) and 207(b) matters.

Example 2: A former Senior Employee of the Department of Housing and Urban Development establishes a consulting firm and is engaged by the City of Los Angeles to aid it in procuring a particular grant. He may not represent Los Angeles before his former Department because his "principal occupation or employment" is not with such city.

Example 3: A former Senior Employee of the Department of Education founds a vocational school for the training of legal paraprofessionals and associated staff. He desires to communicate with officials at his former Department for the purpose of establishing a program of assistance to such institutions. He may not do so, since the vocational school is not an "accredited, degree granting institution of higher education."

(c) *No prior involvement required.* The prohibition contained in this section applies without regard to whether the former Senior Employee had participated in, or had responsibility for, the particular matter and includes matters which first arise after the employee leaves Government service. The section aims at the possible use of personal influence based upon past Governmental affiliations to facilitate the transaction of business.

(d) *Specific parties unnecessary.* The particular matter in which the former Senior Employee proposes to act before his or her former agency need not be one "involving specific parties," and thus is not limited to disputed proceedings or contracts in which a party has already been identified. However, the restriction does not encompass every kind of matter, but only a particular one similar to those cited in the statutory language, *i.e.*, any judicial or other proceeding, application, request for a ruling or determination, contract, claim, controversy, investigation, charge, accusation, or arrest. Rulemaking is specifically included. Thus such matters as the proposed adoption of a regulation or interpretive ruling, or an agency's determination to undertake a particular project or to open such a project to competitive bidding are covered. Not included are broad technical areas and policy issues and conceptual work done before a program has become particularized into one or more specific projects. The particular matter must be pending before the agency or be one in which the agency has a "direct and substantial interest."

(NOTE: Each post employment activity in the examples in this section is assumed to take place within one year of termination of Government employment.)

Example 1: A Senior Employee of the Department of Health and Human Services leaves Government employment for private practice, and shortly thereafter telephones a former associate urging that the Department (a) adopt a new procedure to put a ceiling on hospital costs; (b) not adopt a particular rule proposed for drug testing; and (c) oppose a bill pending in Congress relating to such drug testing. He is prohibited from attempting to influence his former coworker on any of these matters. The first, not yet pending, is of interest to the Department; the second is pending in the Department; and the third is pending elsewhere, and is of interest to the Department. Note that the former Senior Employee may, however, communicate the same views to Congress, other agencies, the public or the press.

Example 2: A recently retired Senior Employee of the Department of Defense believes that the Department's general emphasis on manned aircraft is not in the national interest. After his departure, he may continue to argue the point to the Department.

(e) *Element of controversy or influence required.* The prohibition on acting as a representative or attempting to influence applies to situations in which there is an appreciable element of actual or potential dispute or an application or submission to obtain Government rulings, benefits or approvals, and not to a situation merely involving, for example: the transmission or filing of a document that does not involve an application for Government benefit, approval or ruling; a request for information; purely social or informational communications; or those required by law or regulations (in situations other than adversary proceedings). Each agency should, after consulting with the Director or the Attorney General, as appropriate, give guidance on the kinds of applications, filings and other matters which are not prohibited by section 207(c).

Example 1: A former Senior Employee of the Internal Revenue Service prepares and mails a client's tax return. This is not a prohibited act. Should any controversy arise in connection with the tax return, the former employee may not represent the client, but may be called upon to state how the return was prepared.

Example 2: A former Senior Employee of the Securities and Exchange Commission prepared and transmitted for filing to the Commission a client's annual report on form 10-K. This is not a violation, because the 10-K is a disclosure report, not intended to obtain a Government benefit or ruling.

Example 3: A former Senior Employee of the Securities and Exchange Commission becomes executive vice-president of a major industrial corporation, registered under the Securities Exchange Act of 1934. Pursuant to Commission regulations, the officers of the corporation are required to sign certain filings on behalf of the corporation, which are transmitted to the Commission. The employee may review, concur or request

changes in, and sign any such filing required to be transmitted to the Commission.

(f) *Agency activity or interest in matter.* The restriction applies to the former employee's contacts with his or her former agency in connection with a matter before or of "direct and substantial interest" to the agency.

Example 1: A former Senior Employee of the Securities and Exchange Commission is asked to represent Z Company in a new matter before the Commission, one in which the former employee had no prior involvement. He may not do so.

Example 2: The matter in the foregoing example is referred to the Department of Justice for prosecution, and the former employee is asked for the first time to represent Z Company in the criminal proceeding. The matter is likely to be of direct and substantial interest to the Commission. If so, the former employee may not communicate with the Commission in the matter. However, the former Senior Employee may communicate with the Commission in order to determine whether it asserts a direct and substantial interest in the criminal proceeding. In the event of a negative answer to the question, the former Senior Employee may communicate with the Commission.

Example 3: In connection with an entirely new matter a former Senior Employee of the Securities and Exchange Commission undertakes the representation of Z Company in private litigation brought by Q Company, (*e.g.*, a private action arising under the Securities Exchange Act of 1934). Before the suit was commenced, there was no actual expression of interest by the Commission in the matter. As the litigation develops, an important question of statutory interpretation is raised, and the Commission files a brief as *amicus curiae* (friend of the court). The former Senior Employee may respond to the brief and need not withdraw from representation of Z Company, but he may not otherwise communicate with the Commission in the matter. If the Commission were to commence a proceeding or investigation again, Z Company on the basis of the same facts involved in the private litigation, the former employee could continue his representation in the private litigation, but could not represent Z Company in the Commission's proceeding until after the expiration of one year from the termination of his employment with the Commission.

[NOTE: Where an agency becomes a party to a proceeding subsequent to its commencement, the question whether a former Senior Employee may continue representation should ordinarily be decided by the court on a motion for disqualification in the particular circumstances.]

Example 4: In connection with a new matter, a former Senior Employee of the Federal Food and Drug Administration, since retired to private law practice, is asked to consult and assist in the preparation of briefs to be filed with the Administration on a new particular matter. He may do so, but he should not sign briefs or other communications or take any other action that might constitute an appearance.

(g) *Application or proposals for funding of research.* In connection with any application or proposal for Government funding of research, the restrictions of this section do not prevent a former Senior Employee from assuming responsibility for the direction or conduct of such research and from providing scientific or technological information to the Senior Employee's former agency regarding such research. The former Senior Employee may not, however, submit the application on behalf of the applicant or argue for its approval or funding by the agency.

Example 1: A former Senior Employee of the National Institute of Health (NIH), employed by a non-exempt research institute, prepares an application to NIH for a research contract. The application is submitted to NIH by the institute and lists the Senior Employee as principal investigator. The Senior Employee does not violate 18 U.S.C. 207(c) by preparing the application or by being listed as principal investigator, since these are not representational activities. He may also sign an assurance to NIH, as part of the application, that he will be responsible for the scientific and technical direction and conduct of the project if an award is made. He may also communicate with NIH to provide scientific or technical information on the application, including presentation to NIH personnel at the research site, so long as he does not argue for approval or funding of the application.

(h) *Personal matters.* Unlike the provisions of subsections 207(a) and (b) the restrictions of this section apply when the former Senior Employee seeks to represent himself or herself. However, they do not apply to appearances or communications concerning matters of a personal and individual nature, such as personal income taxes, pension benefits, or the application of any provision of these regulations to an undertaking proposed by a Senior Employee. (See 18 U.S.C. 207(i).) A former Senior Employee may also

appear *pro se* (on his or her own behalf) in any litigation or administrative proceeding, involving the individual's former agency. The former employee may not contact his or her former agency in order to secure an item of business, except for (1) discussions in contemplation of being employed by the agency as a consultant or otherwise; or (2) a proposal to furnish scientific or technological information to the Government.

Example 1: Any former Government Employee may contact his or her former agency to seek information or determinations as to matters in question under these regulations or under 18 U.S.C. 207, such as whether a particular matter is considered to have been under the employee's official responsibility, whether a matter is one in which the agency asserts a direct and substantial interest, or whether a current matter is considered to be the same as that in which the employee had been involved.

(i) *Statements based on special knowledge.* The restrictions of the section do not prevent a former Senior Employee from making or providing a statement, which is based on the former Senior Employee's own special knowledge in the particular area that is the subject matter of the statement, provided that no compensation is thereby received, other than that regularly provided by law or regulation for witnesses. (See 18 U.S.C. 207(i).)

Example 1: A former Senior Employee may make any statement of his own views to his former agency on any subject matter in which he has no substantial pecuniary interests, acting on his own behalf.

Example 2: A former Senior Employee is called by his successor at the agency for the purpose of eliciting some information on a matter in which he had been involved in an official capacity. His response is not prohibited.

Example 3: A former Senior Employee may recommend an individual to her former agency for employment, based on her own personal knowledge of the individual's qualifications and character.

(j) *Measurement of one-year restriction period.* The statutory one-year period is measured from the date when the individual's responsibility as a Senior Employee in a particular agency ends, not from the termination of Government service, unless the two occur simultaneously. (See § 2637.202(e).)

§ 2637.205 Limitation of restrictions of 18 U.S.C. 207(c) to less than that whole of a department or agency.

(a) *Authority.* There are two methods by which the application of the one-year "cooling-off" prohibition of 18 U.S.C. 207(c) may be limited to less than the entirety of a department or agency. First, 18 U.S.C. 207(e) provides that the Director may by rule designate as "separate" a statutory agency or bureau which exercises functions that are distinct and separate from the remaining functions of the parent department or agency of which it is part. (see § 2637.214) Second, under the provisions of 18 U.S.C. 207(d)(1)(C), the Director may restrict the application of the prohibition as to a former employee (other than one who served in an Executive Level position or at a uniformed service grade level of 0-9 and above) insofar as it affects his or her communications with persons in an unrelated agency or bureau within his former parent department or agency which has separate and distinct subject matter jurisdiction from the agency or bureau in which he or she served. (see § 2637.215)

(b) *Distinctions between the 18 U.S.C. 207(e) and 207(d)(1)(C) provisions.* (1) The authority granted by 18 U.S.C. 207(e) is applicable solely to a separate *statutory* agency or bureau, that is, one created by statute or the functions of which are expressly referred to by statute in such a way that is appears that Congress intended that its functions were to be separable. A determination made under this 18 U.S.C. 207(e) does not, however, benefit former heads of the separate statutory agency or bureau. Such a determination does, however, work to the benefit of other employees at Executive Level or at uniformed service grade level of 0-9 or above.

(2) The determination made pursuant to section 207(d)(1)(C) is intended to provide similar recognition of separability where the subordinate agency or bureau has been *administratively* created. A determination of such sepa-

rability does inure to the benefit of the head of the separate component if he is a Senior Employee designated by the Director. However, the determination is not beneficial to persons, including the head of a separate component, in positions at Executive Level or serving at uniformed service grade level of 0–9 above.

(c) *Separate Statutory Components*—(1) *Procedure.* Each agency shall notify the Director, in writing, of any separate statutory agency or bureau which it desires to submit for such designation under 18 U.S.C. 207(e), providing:

(i) A description of the functions of the agency or bureau, indicating the basis on which such functions are claimed to be distinct and separate from the parent organization;

(ii) The separate statutory basis of the agency or bureau; and

(iii) Identification of those positions in the parent agency with official responsibility for supervision of such separate statutory agency or bureau.

(2) *Standards.* A parent agency may propose as a "separate" statutory agency an agency or bureau (i) created specifically by statute, (ii) the functions of which are expressly referred to by statute in such a way as to indicate that a separate component was intended or (iii) which is the successor to either of the foregoing; but a decision as to the sufficiency of the statutory authority as well as the separability of functions shall be reserved to the Director, OGE.

(3) *Effect of designation.* If a subordinate part of an agency is designated as "separate" by the Director, then Senior Employees of such separate agency and those of the parent agency are not subject to the restrictions of section 207(c) as to each others' agencies—except that the prohibition of section 207(c) remains applicable to the former head of a "separate" subordinate agency and to former Senior Employees of the parent agency whose official responsibility included supervision of the subordinate agency.

Example 1: A former Senior Employee of the Product Agency in Executive Department leaves and joins a law firm which represents Q Corporation. Product Agency has been designated by the Director as separate from Executive Department. The former employee is not restricted from representing the Q Corporation on a new matter before the Executive Department.

(d) *Separate Nonstatutory Components*—(1) *Procedure.* Each agency may notify the Director, in writing, of a component agency, bureau or office having separate and distinct subject matter jurisdiction which it desires to submit for designation under 18 U.S.C. 207(d)(1)(C), providing:

(i) A description of the subject matter jurisdiction of such component, indicating the basis on which such jurisdiction is claimed to be separate and distinct from certain other agencies, bureaus and offices of the parent agency;

(ii) A description of the nature of the connections and interactions between such component and certain other agencies, bureaus or offices of the parent agency indicating the basis on which the component is claimed to be unrelated;

(iii) A statement of the basis on which it is claimed that no potential exists for use by former Senior Employees of such component of undue influence or unfair advantage with respect to the named other agencies, bureaus or offices of the parent agency, based on past Government service; and

(iv) Identification of those organizational units of the parent agency having administrative or operational authority over such component agency, bureau or office.

(2) *Standards.* (i) A parent agency may propose as "separate" from other parts of a department or agency any agency or bureau having subject matter jurisdiction separate and distinct from one or more other portions of the department or agency accompanied by a showing that there would be no potential for use of undue influence or unfair advantage based upon past Government service if a former employee of one such subordinate agency or bureau communicated with employees of such other portions of the department or agency.

(ii) A determination under this section rests solely with the Director, OGE, and is available only for those subordinate components which would, but for the lack of a statutory basis,

qualify for separate agency treatment under 18 U.S.C. 207(e).

(iii) Where one component has supervisory authority over another, the two components may not be considered separate and distinct for purposes of this section.

(iv) The requirement of "separate and distinct subject matter jurisdiction" may be met in at least two ways. First, the substantive areas of coverage may be distinct. For example, an office or bureau within the parent agency may handle only maritime matters. Second, the regional area of coverage may be different. For example, one regional office may, on appropriate facts, be considered separate and distinct from other regional offices and from the parent agency—except for the bureau or office in the parent agency which is responsible for its supervision.

(v) It is necessary to specify the "unrelated agency or bureau within the same department or agency" as to which it is recommended that post employment communication be permitted. For example, one bureau may involve a subject matter distinct from some, but not all, parts of the parent department. Attempts to fractionalize a department could, however, become deeply complicated and involve difficult judgments and fact-finding. OGE will not usually act on such cases, and submissions should be confined to relatively clear cases.

(3) *Effect of determination.* If a component agency, bureau or office is determined to be separate by the Director, then Senior Employees of such component are not subject to the restrictions of 18 U.S.C. 207(c) and § 2637.204 as to the remaining agencies, bureaus or offices of the parent agency (except certain such agencies, bureaus or offices as specified in § 2637.215)—except that the prohibition of section 207(c) and § 2637.204 shall remain applicable (i) to those former Senior Employees of such component who served in positions designated by 18 U.S.C. 207(d)(1)(A) and (B) and (ii) to former Senior Employees of such component with respect to the parent agency (as defined in § 2637.205(e)). Such limited application of 18 U.S.C. 207(c) may be available for the head of a separate component, unlike the limitation of 18 U.S.C. 207(e), as determined by the Director.

Example 1: In the Department of Justice, while the Antitrust Division may be "separate" from other Divisions, it is not separate from the immediate office of the Attorney General.

§ 2637.206 Exemption for scientific and technological information.

(a) *Exemption.* The making of communications solely for the purpose of furnishing scientific or technological information pursuant to agency procedures is exempt from all prohibitions and restrictions set forth in §§ 2637.201—2637.204 of these regulations (subsections (a), (b), and (c) of 18 U.S.C. 207). This exemption allows the free exchange of such information regardless of a former Government employee's prior participation in or responsibility for the matter. The former Senior Employee should not argue for the acceptance of a proposal. The exemption is not limited to communications constituting the furnishing of information, but includes those "for the purpose of" doing so. No violation occurs when, for example, a former Government employee working on a project makes contact to determine the kind and form of information required, or the adequacy of information already supplied, so long as agency procedures are satisfied.

Example 1: A project manager, regardless of prior involvement in a particular matter, may contact the Government to determine deficiencies in system design or performance, furnish scientific or technological information relating to a solution or approach to a problem, seek related information from the Government; advise and supervise others who are involved as to such matters; and meet with Government technical experts for such purpose; provided in each case that there is compliance with such agency regulations as have been issued.

(b) *Necessary information.* Scientific and technological information includes feasibility, risk, cost, and speed of implementation, when necessary to appreciate fairly the practical significance of the information. The Government may and should be fully informed of the significance of scientific and technological alternatives.

(c) *Intent to influence.* The furnishing of meritorious or convincing scientific or technological proposals does not constitute an intent to influence. (See § 2637.201(b)(7) of this part.)

(d) *Expert testimony.* This exemption does not include testimony as an "expert" in adversary proceedings in a matter in which the United States is involved or has an interest. Such testimony is governed by regulations set forth in § 2637.208. As to assistance as an expert or consultant, see § 2637.203(g), Example 7.

(e) *Agency responsibility for procedures.* The primary responsibility for developing procedures to guide activity under this exemption lies with each agency, so that such procedures comport with the particular characteristics of agency programs and needs. Such procedures will be reviewed periodically by the Director. In promulgating procedures, an agency may take to consideration: Limiting communications to certain formats which are least conducive to the use of personal influence; segregating, to the extent possible, meetings and presentations involving matters of technical substance from those involving other aspects of the relationship; requiring that the designated agency ethics official be informed of instances where the exemption is used; or employing more restrictive practices in circumstances involving either immediate competition for contracts or applications for grants than in those involving an ongoing project.

§ 2637.207 Exemption for persons with special qualification in a technical discipline.

(a) *Applicability.* A former Government employee may be exempted from the restrictions on post employment practices if the head of the agency concerned with the particular matter, in consultation with the Director, executes a certification published in the FEDERAL REGISTER that such former Government employee has outstanding qualifications in a scientific, technological, or other technical discipline; is acting with respect to a particular matter which requires such qualifications; and that the national interest would be served by such former Government employee's participation.

(b) *When appropriate.* This exemption should generally be utilized only where the former Government employee's involvement is needed on so continuous and comprehensive a basis that compliance with the procedures adopted for the communication of technical information (see § 2637.206), or other actions to isolate the former Government employee from other aspects of the matter, would be burdensome and impractical.

(c) *Certification authority.* Certification should take place at no lower level than the head of the agency, the deputy thereof, or in the absence of both, the acting agency head. Consultation with the Director shall precede any certification. The exemption takes place upon the execution of the certification, provided that it is transmitted to the FEDERAL REGISTER for publication.

(d) *Agency registry.* An agency may establish a registry for current employees, wherein the nature of their qualifications in one or more technical fields is certified after review by a supervisor, as a basis for establishing such qualifications in connection with, and to expedite, a later request for certification, should the necessity for such request arise.

§ 2637.208 Testimony and statements under oath or subject to penalty of perjury.

(a) *Statutory basis.* Section 207(h) provides:

"Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury."

(b) *Applicability.* A former Government employee may testify before any court, board, commission, or legislative body with respect to matters of fact within the personal knowledge of the former Government employee. This provision does not, however, allow a former Government employee, otherwise barred under 18 U.S.C. 207 (a), (b), or (c) to testify on behalf of another as an expert witness except: (1) To the extent that the former employ-

ee may testify from personal knowledge as to occurrences which are relevant to the issues in the proceeding, including those in which the former Government employee participated, utilizing his or her expertise, or (2) in any proceeding where it is determined that another expert in the field cannot practically be obtained; that it is impracticable for the facts or opinions on the same subject to be obtained by other means, and that the former Government employee's testimony is required in the interest of justice.

(c) *Statements under penalty of perjury.* A former Government employee may make any statement required to be made under penalty of perjury, such as those required in registration statements for securities, tax returns, or security clearances. The exception does not, however, permit a former employee to submit pleadings, applications, or other documents in a representational capacity on behalf of another merely because the attorney or other representative must sign the documents under oath or penalty of perjury.

§ 2637.209 Partners of present or former Government employees.

(a) *Scope.* Section 207(g) of 18 U.S.C. prohibits a partner of a current Government employee from acting as agent or attorney before the United States in a particular Government matter in which such Government employee participates, or did participate, personally and substantially. To the extent such section involves the activities of current Government employees and their partners, it is beyond the scope of these regulations.

(b) *Imputation.* Neither the Act nor these regulations impute the restrictions on former employees to partners or associates of such employees. Imputation of the restrictions of sections 207 (b)(ii) and (c) to partners of former employees would be inappropriate for the additional reason that section 207(b)(ii) itself restricts secondary-level activity, and section 207(c) is directed at the exercise of influence personal to the former Senior Employee.

§ 2637.210 Officials of a State; officials of corporations created by an Act of Congress and public international organizations.

For purposes of sections 207 (a), (b) and (c) of title 18 U.S.C.:

(a) An official whose powers are established by the constitution of any State of the United States does not act on behalf of "any other person" or "anyone" when acting in his or her official capacity, but rather constitutes the official authority of the State; and

(b) A former employee does not engage in unlawful activity when he or she acts on behalf of (1) a corporation specifically created by an Act of Congress if any of its directors is currently appointed by the United States; or (2) any public international organization if he or she serves by nomination or request of the United States or on temporary assignment from any agency.

§ 2637.211 Standards and procedures for designating senior employee positions pursuant to 18 U.S.C. 207(d).

(a) *Definitions.* As used in these regulations, *Senior Employee* refers to any person specified in or designated pursuant to 18 U.S.C. 207(d)(1); that is, employed by the United States:

(1) At a rate of pay specified or fixed according to subchapter II of chapter 53 of title 5, U.S.C., generally known as "Executive Level;" or

(2) On active duty as a commissioned officer of a uniformed service in a pay grade of 0-9 or above as described in 37 U.S.C. 201; or

(3) In a position in any pay system for which the basic rate of pay is equal to or greater than that for GS-17 as prescribed by 5 U.S.C. 5332 or positions which are established within the Senior Executive Service (SES) pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay grade 0-7 and 0-8, as described in 37 U.S.C. 201, and who has significant decision-making or supervisory responsibilities, as designated by the Director, pursuant to paragraph (b) of this section.

(b) *Designation procedures.* The following procedures will be followed in

designation of Senior Employee positions pursuant to 18 U.S.C. 207(d)(1)(C):

(1) *Positions at GS–17 and 18 level, Senior Executive Service, and pay grades 0–7 and 0–8 of the uniformed services.* The following are designated effective February 28, 1980, unless exempted as provided in paragraph (b)(2) of this section: All positions classified at GS–17 or above in the General Schedule; those in any other pay system, the rate of pay for which is at least that of grade GS–17; those in the Senior Executive Service; and those active duty uniformed service officers serving in pay grades 0–7 and 0–8. Each agency head shall submit to the Director, by May 15, 1979 and on every May 15 thereafter, a report consisting of: (i) a description of all positions as set forth in this paragraph; (ii) the agency's recommendation as to those positions that should not be designated, based on standards established in these regulations or any other reason; and (iii) the basis and reasons for each such recommendation. After making such additional inquiries as appear desirable, the Director will determine which positions should be exempt. Notwithstanding the foregoing, the effective date for Executive Level positions, whether or not included in the Senior Executive Service, is July 1, 1979.

(2) *Standards for designation and exemption.* Positions, or classes of positions, which do not have significant decision-making or supervisory responsibility will be exempted from designation. Initial exemptions will be retroactive. Classes of positions which may be considered for exemption are those in which decision-making responsibility does not regularly extend to major policy issues within the agency or in which supervisory responsibility extends to less than all of a directorate, bureau or department which has major policy or operational responsibility. The foregoing may include, without limitation, special assistants, technical and professional advisors to persons who make policy decisions, those involved primarily in research and technical work, and administrative law judges.

(3) *Senior Executive Service.* The establishment of positions within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978 is the responsibility of the Office of Personnel Management. The choice of an individual to enter or not to enter the Senior Executive Service is not a relevant factor in the designation under these regulations of a position held by such person.

(4) *"Rate of pay."* As used in the definition of Senior Employee, the "rate of pay" is that specified by or pursuant to law without regard to the ceiling limitations of section 5308 or section 5373 of title 5 U.S.C.; except that an individual in an executive level or GS–17 or 18 position is deemed to be employed at the rate of pay specified for that position. Increases in pay due to "steps" are not considered in determining pay grade or level.

(c) *Differential designation.* Where appropriate, the Director may designate positions for purposes of 18 U.S.C. 207(c) without designating the positions for purposes of 18 U.S.C. 207(b)(ii).

Example 1: It may be determined that a given position or class of positions will be restricted as to contact in the first post employment year, but not as to assisting in representation.

(d) *Fair notice of designation.* No Senior Employee designation made pursuant to 18 U.S.C. 207(d)(1)(C) will be effective until the last day of the fifth full calendar month after the first publication of a notice by the Director of intention to designate; except as indicated in paragraph (f) of this section, and as to a person first occupying the position after such notice is published. The designation in paragraph (b)(1) of this section and the comparable designation in the interim regulations of April 3, 1979 (44 FR 19974) constitutes notice.

(e) *"Acting" or temporary positions.* An individual may serve in a position designated pursuant to 18 U.S.C. 207(d) for up to 60 days in an "acting" or temporary capacity without being subject to those restrictions which specially apply to such positions, unless such individual (1) was transferred or detailed from another designated posi-

tion, or (2) without a significant break in continuity, is named permanently to such position.

(f) *Special Government Employee.* A Special Government Employee who serves on 60 days or less in a given calendar year may serve in a designated position without being subject to the restrictions which specially apply to such position. A Special Government Employee is deemed to serve only on those days actually engaged in work for the Government under his or her Special Government Employee arrangement.

(g) *Publication.* Positions designated by the Director pursuant to 18 U.S.C. 207(d)(1)(C) and not exempted will be published in the FEDERAL REGISTER.

(h) *Computation of time.* An individual who transfers from a designated position to one that is not designated shall compute the commencement of the time periods contained in 18 U.S.C. 207 (b)(ii) and (c) from the time of such transfer, except as indicated in paragraph (i) of this section. (See § 2637.202(e).)

(i) *Position shifting.* In any case where a person transfers from a designated position to one that is not, the agency head shall within one month transmit to the Director a report reciting the functions of each position, the reason for the transfer, and the identities of the prior holder of the position assumed and the successor, if any, to the position departed. If the Director designates the newly assumed position pursuant to section 207(d)(1)(C) of title 18 U.S.C., such designation shall be effective retroactively to the date of transfer notwithstanding paragraph (d) of this section.

(j) *Revocation of Designations.* In the event the Director determines that a position previously designated should not have been, the designation will be revoked. Except for designations made under paragraph (i) of this section, the revocation may be made retroactive if the initial designation is determined to have been erroneous or if there is a change in standards for designation applicable to the position. Retroactive effect will not be given where the basis for revocation is a change in the functions or importance of a position.

§ 2637.212 Administrative enforcement proceedings.

(a) *Basic procedures.* The following basic guidelines for administrative enforcement of restrictions on post employment activities are designed to expedite consultation with the Director as required pursuant to section 207(j) of title 18 U.S.C.

(1) *Delegation.* The head of an agency may delegate his or her authority under this subpart.

(2) *Initiation of administrative disciplinary hearing.* (i) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information appears substantiated, the agency head shall expeditiously provide such information, along with any comments or agency regulations, to the Director and to the Criminal Division, Department of Justice. The agency should coordinate any investigation on administrative action with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice communicates to the Agency that it does not intend to initiate criminal prosecution.

(ii) Whenever an agency has determined after appropriate review that there is reasonable cause to believe that a former Government employee has violated any of these regulations or 18 U.S.C. 207(a), (b), or (c), it may initiate an administrative disciplinary proceeding by providing the former Government employee with notice as defined in paragraph (a)(3) of this section. Agencies may establish procedures to protect the privacy of former employees as to allegations made prior to a determination of sufficient cause to initiate an administrative disciplinary hearing.

(3) *Adequate notice.* (i) An agency must provide a former Government employee with adequate notice of an intention to institute a proceeding and an opportunity for a hearing.

(ii) Notice to the former Government employee must include:

(A) A statement of allegations (and the basis thereof) sufficiently detailed to enable the former Government employee to prepare an adequate defense;

(B) Notification of the right to a hearing; and

(C) An explanation of the method by which a hearing may be requested.

(4) *Presiding official.* (i) The presiding official at proceedings under this subpart shall be the agency head or an individual to whom the agency head has delegated authority to make an initial decision (hereinafter referred to as "examiner").

(ii) Appropriate qualifications shall be established for examiners.

(iii) An examiner shall be impartial. No individual who has participated in any manner in the decision to initiate the proceedings may serve as an examiner in those proceedings.

(5) *Time, date and place.* (i) The hearing shall be conducted at a reasonable time, date, and place.

(ii) In setting a hearing date, the presiding official shall give due regard to the former Government employee's need for:

(A) Adequate time to prepare a defense properly, and

(B) An expeditious resolution of allegations that may be damaging to his or her reputation.

(6) *Hearing rights.* A hearing shall include, at a minimum, the following rights:

(i) To represent oneself or to be represented by counsel,

(ii) To introduce and examine witnesses and to submit physical evidence,

(iii) To confront and cross-examine adverse witnesses,

(iv) To present oral argument, and

(v) To receive a transcript or recording of the proceedings, on request.

(7) *Burden of proof.* In any hearing under this subpart, the agency has the burden of proof and must establish substantial evidence of a violation.

(8) *Hearing decision.* (i) The presiding official shall make a determination exclusively on matters of record in the proceeding, and shall set forth in the decision all findings of fact and conclusions of law relevant to the matters at issue.

(ii) Within a reasonable period of the date of an initial decision, as set by the agency, either party may appeal the decision to the agency head. The agency head shall base his or her decision on such appeal solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues.

(iii) If the agency head modifies or reverses the initial decision, he or she shall specify such findings of fact and conclusions of law as are different from those of the hearing examiner.

(9) *Administrative sanctions.* The agency head may take appropriate action in the case of any individual who was found in violation of 18 U.S.C. 207 (a), (b), or (c) of these regulations after a final administrative decision or who failed to request a hearing after receiving adequate notice, by:

(i) Prohibiting the individual from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on any matter of business for a period not to exceed five years, which may be accomplished by directing agency employees to refuse to participate in any such appearance or to accept any such communication; or

(ii) Taking other appropriate disciplinary action.

(10) *Judicial review.* Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) of these regulations may seek judicial review of the administrative determination.

(11) *Consultation and review.* Each agency shall submit a copy of its procedures for administrative enforcement to the Director.

§ 2637.213 Effective date of restrictions.

(a) *Persons affected.* Any person who holds a Government position after June 30, 1979, becomes subject to any additional restrictions relating to the holder of that position contained in the amendments to 18 U.S.C. 207 as set forth in these regulations. Restrictions which depend on the designation of a position by the Director shall become applicable on the date such designation becomes effective.

(b) *Fair notice of substantive changes.* No change in the substance of these regulations shall become ef-

fective with respect to a Government employee who is adversely affected by such change until and unless such employee remains in a position to which such change is applicable for a period of five months following the first publication of a regulation in final form, reflecting or prescribing such change, or unless such employee accepts such a position after the publication.

§ 2637.214 Separate statutory agencies: Designations.

NOTE: Part 2637 provides guidance concerning the prior version of 18 U.S.C. 207 (1988) as it continues to apply to individuals who terminated Government service (or a "Senior" Government position) before January 1, 1991. However, since no former "Senior Employee" who terminated service before that date could any longer be subject to the one-year restriction of section 207(c) of 18 U.S.C. as it existed prior to its amendment by the Ethics Reform Act of 1989, the listing of separate statutory agencies that previously appeared in § 2637.214 has been deleted.

[57 FR 62468, Dec. 31, 1992]

§ 2637.215 Separate components of agencies or bureaus: Designations.

NOTE: Part 2637 provides guidance concerning the prior version of 18 U.S.C. 207 (1988) as it continues to apply to individuals who terminated Government service (or a "Senior" Government position) before January 1, 1991. However, since no former "Senior Employee" who terminated service before that date could any longer be subject to the one-year restriction of section 207(c) of 18 U.S.C. as it existed prior to its amendment by the Ethics Reform Act of 1989, the listing of separate components that previously appeared in § 2637.215 has been deleted.

[57 FR 62468, Dec. 31, 1992]

§ 2637.216 "Senior Employee" designations.

NOTE: Part 2637 provides guidance concerning the prior version of 18 U.S.C. 207 (1988) as it continues to apply to individuals who terminated Government service (or a "Senior" Government position) before January 1, 1991. However, since no former "Senior Employee" who terminated service before that date could any longer be subject to either the two-year restriction of section 207(b)(ii) or the one-year restriction of section 207(c) of 18 U.S.C. as they existed prior to their amendment by the Ethics Reform Act of 1989, the listing of "Senior Employee" positions that previously appeared in § 2637.216 has been deleted.

[57 FR 62468, Dec. 31, 1992]

PART 2638—OFFICE OF GOVERNMENT ETHICS AND EXECUTIVE AGENCY ETHICS PROGRAM RESPONSIBILITIES

Subpart A—General Provisions

Sec.
2638.101 Authority and purpose.
2638.102 General policies.
2638.103 Agency regulations.
2638.104 Definitions.

Subpart B—Designated Agency Ethics Officials

2638.201 In general.
2638.202 Responsibility of agency head.
2638.203 Duties of designated agency ethics official.
2638.204 Deputy ethics official.

Subpart C—Formal Advisory Opinion Service

2638.301 In general.
2638.302 Who may request a formal advisory opinion.
2638.303 Subject matter of formal advisory opinions.
2638.304 Form of requests for formal advisory opinions.
2638.305 Acceptance of requests for formal advisory opinions.
2638.306 Notice of requests.
2638.307 Written comment on requests.
2638.308 Issuance.
2638.309 Reliance on formal advisory opinions.
2638.310 Public availability and publication of formal advisory opinions.
2638.311 Copies of published formal advisory opinions.
2638.312 Referral of requests.
2638.313 Agency opinions.

Subpart D—Correction of Executive Branch Agency Ethics Programs

2638.401 In general.
2638.402 Corrective orders.
2638.403 Agency compliance.
2638.404 Report of noncompliance.

Subpart E—Corrective and Remedial Action in Cases Involving Individual Executive Agency Employees

2638.501 In general.
2638.502 Recommendations and advice.
2638.503 Agency investigations.
2638.504 Director's finding.

H

(f) Any commercial establishment engaged in the development or manufacture of classified military or naval arms, munitions, equipment, designs, ships, aircraft, or vessels for the United States Army, Navy, or Air Force.

2. All military, naval, or air-force aircraft, weapons, ammunition, vehicles, ships, vessels, instruments, engines, manufacturing machinery, tools, devices, or any other equipment whatsoever, in the possession of the Army, Navy, or Air Force or in the course of experimentation, development, manufacture, or delivery for the Army, Navy, or Air Force which are now classified, designated, or marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as "top secret", "secret", "confidential", or "restricted", and all such articles, materials, or equipment which may hereafter be so classified, designated, or marked with the approval or at the direction of the President.

3. All official military, naval, or air-force books, pamphlets, documents, reports, maps, charts, plans, designs, models, drawings, photographs, contracts, or specifications which are now marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as "top secret", "secret", "confidential" or "restricted" and all such articles or equipment which may hereafter be so marked with the approval or at the direction of the President.

This order supersedes Executive Order No. 8381 of March 22, 1940, entitled "Defining Certain Vital Military and Naval Installations and Equipment."

§ 796. Use of aircraft for photographing defense installations

Whoever uses or permits the use of an aircraft or any contrivance used, or designed for navigation or flight in the air, for the purpose of making a photograph, sketch, picture, drawing, map, or graphical representation of vital military or naval installations or equipment, in violation of section 795 of this title, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Revision Notes

Based on sections 45, 45a, and 45c of title 50, U.S.C., 1940 ed., War and National Defense (Jan. 12, 1938, ch. 2, §§ 1, 2, 4, 52 Stat. 3, 4).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Punishment provided by section 795 of this title is repeated and is from said section 45 of title 50, U.S.C., 1940 ed.

Minor changes were made in phraseology.

§ 797. Publication and sale of photographs of defense installations

On and after thirty days from the date upon which the President defines any vital military or naval installation or equipment as being within the category contemplated under section 795 of this title, whoever reproduces, publishes, sells, or gives away any photograph, sketch, picture, drawing, map, or graphical representation of the vital military or naval installations or equipment so defined, without first obtaining permission of the commanding officer of the military or naval post, camp, or station concerned, or higher authority, unless such photograph, sketch, picture, drawing, map, or graphical representation has clearly indicated thereon that it has been censored by the proper military or naval authority, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Revision Notes

Based on sections 45 and 45b, of title 50, U.S.C., 1940 ed., War and National Defense (Jan. 12, 1938, ch. 2, §§ 1, 3, 52 Stat. 3).

Punishment provision of section 45 of title 50, U.S.C., 1940 ed., War and National Defense, is repeated. Words "upon conviction" were deleted as surplusage since punishment cannot be imposed until a conviction is secured.

Minor changes were made in phraseology.

§ 798. Disclosure of classified information

(a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information—

(1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of the United States or any foreign government; or

(2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or

(3) concerning the communication intelligence activities of the United States or any foreign government; or

(4) obtained by the processes of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) As used in subsection (a) of this section—

The term "classified information" means information which, at the time of a violation of this section, is, for reasons of national security, specifically designated by a United States Government

Agency for limited or restricted dissemination or distribution;

The terms "code," "cipher," and "cryptographic system" include in their meanings, in addition to their usual meanings, any method of secret writing and any mechanical or electrical device or method used for the purpose of disguising or concealing the contents, significance, or meanings of communications;

The term "foreign government" includes in its meaning any person or persons acting or purporting to act for or on behalf of any faction, party, department, agency, bureau, or military force of or within a foreign country, or for or on behalf of any government or any person or persons purporting to act as a government within a foreign country, whether or not such government is recognized by the United States;

The term "communication intelligence" means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

The term "unauthorized person" means any person who, or agency which, is not authorized to receive information of the categories set forth in subsection (a) of this section, by the President, or by the head of a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States.

(c) Nothing in this section shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof.

(Added Oct. 31, 1951, c. 655, § 24(a), 65 Stat. 719.)

EDITORIAL NOTES

Codification. Another section 798 of this title, as added June 30, 1953, § 4, was renumbered section 798A of this title.

§ 798A. Temporary extension of section 794

The provisions of section 794 of this title, as amended and extended by section 1(a)(29) of the Emergency Powers Continuation Act (66 Stat. 333), as further amended by Public Law 12, Eighty-third Congress, in addition to coming into full force and effect in time of war shall remain in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950 (Proc. 2912, 3 C.F.R., 1950 Supp., p. 71), or such earlier date as may be prescribed by concurrent resolution of the Congress, and acts which would give rise to legal consequences and penalties under section 794 when performed during a state of war shall give rise to the same legal consequences and penalties when they are performed during the period above provided for.

(Added June 30, 1953, c. 175, § 4, 67 Stat. 134, § 798, renumbered § 798A, Pub.L. 101-647, Title XXXV, § 3519(a), Nov. 29, 1990, 104 Stat. 4923.)

EDITORIAL NOTES

References in Text. Section 1(a)(29) of the Emergency Powers Continuation Act, referred to in text, was repealed.

Proc. 2912, 3 C.F.R., 1950 Supp., p. 71, referred to in text, means Proc. 2914.

§ 799. Violation of regulations of National Aeronautics and Space Administration

Whoever willfully shall violate, attempt to violate, or conspire to violate any regulation or order promulgated by the Administrator of the National Aeronautics and Space Administration for the protection or security of any laboratory, station, base or other facility, or part thereof, or any aircraft, missile, spacecraft, or similar vehicle, or part thereof, or other property or equipment in the custody of the Administration, or any real or personal property or equipment in the custody of any contractor under any contract with the Administration or any subcontractor of any such contractor, shall be fined not more than $5,000, or imprisoned not more than one year, or both.

(Added Pub.L. 85-568, Title III, § 304(c)(1), July 29, 1958, 72 Stat. 434.)

CHAPTER 39—EXPLOSIVES AND OTHER DANGEROUS ARTICLES

Sec.

831. Prohibited transactions involving nuclear materials.
[832 to 835. Repealed.]
836. Transportation of fireworks into State prohibiting sale or use.
[837. Repealed.]

EDITORIAL NOTES

Savings Provisions of Pub.L. 98-473, Title II, c. II. See section 235 of Pub.L. 98-473, Title II, c. II, Oct. 12, 1984, 98 Stat. 2031, as amended, set out as a note under section 3551 of this title.

§ 831. Prohibited transactions involving nuclear materials

(a) Whoever, if one of the circumstances described in subsection (c) of this section occurs—

CLASSIFIED INFORMATION NONDISCLOSURE AGREEMENT

AN AGREEMENT BETWEEN [redacted] AND THE UNITED ST/

(Name of Individual - Printed or typed)

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideratio my being granted access to classified information. As used in this Agreement, classified information is ma or unmarked classified information, including oral communications, that is classified under the standards Executive Order 12356, or under any other Executive order or statute that prohibits the unautho disclosure of information in the interest of national security; and unclassified information that meets standards for classification and is in the process of a classification determination as provided in Sections 1 and 1.2(e) of Executive Order 12356, or under any other Executive order or statute that requires protec for such information in the interest of national security. I understand and accept that by being granted ac to classified information, special confidence and trust shall be placed in me by the United States Governmen

2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection classified information, including the procedures to be followed in ascertaining whether other persons to wh I contemplate disclosing this information have been approved for access to it, and that I understand th procedures.

3. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling classified information by me could cause damage or irreparable injury to the United States or could be usec advantage by a foreign nation. I hereby agree that I will never divulge classified information to anyone unl (a) I have officially verified that the recipient has been properly authorized by the United States Government receive it; or (b) I have been given prior written notice of authorization from the United States Governm Department or Agency (hereinafter Department or Agency) responsible for the classification of the informa or last granting me a security clearance that such disclosure is permitted. I understand that if I am uncer about the classification status of information, I am required to confirm from an authorized official that information is unclassified before I may disclose it, except to a person as provided in (a) or (b), above further understand that I am obligated to comply with laws and regulations that prohibit the unauthori disclosure of classified information.

4. I have been advised that any breach of this Agreement may result in the termination of any secu clearances I hold; removal from any position of special confidence and trust requiring such clearances; or termination of my employment or other relationships with the Departments or Agencies that granted security clearance or clearances. In addition, I have been advised that any unauthorized disclosure of classif information by me may constitute a violation, or violations, of United States criminal laws, including provisions of Sections 641, 793, 794, 798, and *952, Title 18, United States Code, *the provisions ection 783(b), Title 50, United States Code, and the provisions of the Intelligence Identities Protection Act 1982. I recognize that nothing in this Agreement constitutes a waiver by the United States of the right prosecute me for any statutory violation.

5. I hereby assign to the United States Government all royalties, remunerations, and emoluments that ha resulted, will result or may result from any disclosure, publication, or revelation of classified information n consistent with the terms of this Agreement.

6. I understand that the United States Government may seek any remedy available to it to enforce th Agreement including, but not limited to, application for a court order prohibiting disclosure of information breach of this Agreement.

7. I understand that all classified information to which I may obtain access by signing this Agreement is no and will remain the property of, or under the control of the United States Government unless and un otherwise determined by an authorized official or final ruling of a court of law. I do not now, nor will I eve possess any right, interest, title, or claim whatsoever to such information. I agree that I shall return classified materials which have, or may come into my possession or for which I am responsible because c such access: (a) upon demand by an authorized representative of the United States Government; (b) upon th conclusion of my employment or other relationship with the Department or Agency that last granted me security clearance or that provided me access to classified information; or (c) upon the conclusion of m employment or other relationship that requires access to classified information. If I do not return such materia upon request, I understand that this may be a violation of Section 793, Title 18, United States Code, a United States criminal law.

8. Unless and until I am released in writing by an authorized representative of the United States Government, understand that all conditions and obligations imposed upon me by this Agreement apply during the time I ar granted access to classified information, and at all times thereafter.

9. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to b unenforceable, all other provisions of this Agreement shall remain in full force and effect.

(Continue on reverse)

I have read this Agreement carefully and my questions, if any, have been answered. I acknowledge that the briefing officer has made available to me Sections 641, 793, 794 and 952, Title 18, United States Code, *Section 783(b), Title 50, United States Code, the Intelligence Identities Protection Act of 1982, Executive Order 12356 or its successor, and Section 2003.20, Title 32, Code of Federal Regulations, so that I may read them at this time, if I so choose.

SIGNATURE	DATE	SOCIAL SECURITY NUMBER (See Notice below)

ORGANIZATION (IF CONTRACTOR, LICENSEE, GRANTEE OR AGENT, PROVIDE: NAME, ADDRESS AND, IF APPLICABLE, FEDERAL SUPPLY CODE NUMBER) (Type or print)

WITNESS	ACCEPTANCE
THE EXECUTION OF THIS AGREEMENT WAS WITNESSED BY THE UNDERSIGNED.	THE UNDERSIGNED ACCEPTED THIS AGREEMENT ON BEHALF OF THE UNITED STATES GOVERNMENT.
SIGNATURE / DATE	SIGNATURE / DATE
NAME AND ADDRESS (Type or print)	NAME AND ADDRESS (Type or print)

C7 - NOT RECORDED

SECURITY DEBRIEFING ACKNOWLEDGMENT

I reaffirm that the provisions of the espionage laws, other federal criminal laws and executive orders applicable to the safeguarding of classified information have been made available to me; that I have returned all classified information in my custody; that I will not communicate or transmit classified information to any unauthorized person or organization; that I will promptly report to the Federal Bureau of Investigation any attempt by an unauthorized person to solicit classified information, and that I (have) ~~(have not)~~ (strike out inappropriate word or words) received a security debriefing.

SIGNATURE OF EMPLOYEE	DATE

NAME OF WITNESS (Type or print)	SIGNATURE OF WITNESS

b6
b7C

NOTICE: The Privacy Act, 5 U.S.C. 552a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Account Number (SSN) is Executive Order 9397. Your SSN will be used to identify you precisely when it is necessary to 1) certify that you have access to the information indicated above or 2) determine that your access to the information indicated has terminated. Although disclosure of your SSN is not mandatory, your failure to do so may impede the processing of such certifications or determinations, or possibly result in the denial of your being granted access to classified information.

15 OCT 22 2000

*NOT APPLICABLE TO NON-GOVERNMENT PERSONNEL SIGNING THIS AGREEMENT.

STANDARD FORM/312 BACK

Subpart A—General Provisions

§ 2003.1 Purpose.

The purpose of the standard forms prescribed in subpart B is to promote the implementation of the government-wide information security program. Standard forms are prescribed when their use will enhance the protection of national security information and/or will reduce the costs associated with its protection.

[48 FR 40849, Sept. 9, 1983]

§ 2003.2 Scope.

The use of the standard forms prescribed in subpart B is mandatory for all departments, and independent agencies or offices of the executive branch that create and/or handle national security information. As appropriate, these departments, and independent agencies or offices may mandate the use of these forms by their contractors, licensees or grantees who are authorized access to national security information.

[48 FR 40849, Sept. 9, 1983]

§ 2003.3 Waivers.

Except as specifically provided, waivers from the mandatory use of the standard forms prescribed in subpart B may be granted only by the Director of ISOO.

[52 FR 10190, Mar. 30, 1987]

§ 2003.4 Availability.

Agencies may obtain copies of the standard forms prescribed in subpart B by ordering through FEDSTRIP/MILSTRIP or from the General Services Administration (GSA) Customer Supply Centers (CSCs). The national stock number of each form is cited with its description in subpart B.

[50 FR 51826, Dec. 19, 1985]

Subpart B—Prescribed Forms

§ 2003.20 Classified Information Nondisclosure Agreement: SF 312; Classified Information Nondisclosure Agreement: SF 189; Classified Information Nondisclosure Agreement (Industrial/Commercial/Non-Government): SF 189-A.

(a) SF 312, SF 189, and SF 189-A are nondisclosure agreements between the United States and an individual. The prior execution of at least one of these agreements, as appropriate, by an individual is necessary before the United States Government may grant that individual access to classified information. From the effective date of this rule, September 29, 1988, the SF 312 shall be used in lieu of both the SF 189 and the SF 189-A for this purpose. In any instance in which the language in the SF 312 differs from the language in either the SF 189 or SF 189-A, agency heads shall interpret and enforce the SF 189 or SF 189-A in a manner that is fully consistent with the interpretation and enforcement of the SF 312.

(b) All employees of executive branch departments, and independent agencies or offices, who have not previously signed the SF 189, must sign the SF 312 before being granted access to classified information. An employee who has previously signed the SF 189 is permitted, at his or her own choosing, to substitute a signed SF 312 for the SF 189. In these instances, agencies shall take all reasonable steps to dispose of the superseded nondisclosure agreement or to indicate on it that it has been superseded.

(c) All Government contractor, licensee, and grantee employees, or other non-Government personnel requiring access to classified information in the performance of their duties, who have not previously signed either the SF 189 or the SF 189-A, must sign the SF 312 before being granted access to classified information. An employee who has previously signed either the SF 189 or the SF 189-A is permitted, at his or her own choosing, to substitute a signed SF 312 for either the SF 189 or the SF 189-A. In these instances, agencies, with the cooperation of the pertinent contractor, licensee or

Subpart B—Prescribed Forms

§ 2003.20 Classified Information Nondisclosure Agreement: SF 312; Classified Information Nondisclosure Agreement: SF 189; Classified Information Nondisclosure Agreement (Industrial/Commercial/Non-Government): SF 189-A.

(a) SF 312, SF 189, and SF 189-A are nondisclosure agreements between the United States and an individual. The prior execution of at least one of these agreements, as appropriate, by an individual is necessary before the United States Government may grant that individual access to classified information. From the effective date of this rule, September 29, 1988, the SF 312 shall be used in lieu of both the SF 189 and the SF 189-A for this purpose. In any instance in which the language in the SF 312 differs from the language in either the SF 189 or SF 189-A, agency heads shall interpret and enforce the SF 189 or SF 189-A in a manner that is fully consistent with the interpretation and enforcement of the SF 312.

(b) All employees of executive branch departments, and independent agencies or offices, who have not previo' signed the SF 189, must sign the 312 before being granted access to classified information. An employee who has previously signed the SF 189 is permitted, at his or her own choosing, to substitute a signed SF 312 for the SF 189. In these instances, agencies shall take all reasonable steps to dispose of the superseded nondisclosure agreement or to indicate on it that it has been superseded.

(c) All Government contractor, licensee, and grantee employees, or other non-Government personnel requiring access to classified information in the performance of their duties, who have not previously signed either the SF 189 or the SF 189-A, must sign the SF 312 before being granted access to classified information. An employee who has previously signed either the SF 189 or the SF 189-A is permitted, at his or her own choosing, to substitute a signed SF 312 for either the SF 189 or the SF 189-A. In these instances, agencies, with the cooperation of the pertinent contractor, licensee or grantee, shall take all reasonable steps to dispose of the superseded nondisclosure agreement or to indicate on it that it has been superseded.

(d) Agencies may require other persons, who are not included under paragraphs (b) or (c) of this section, and who have not previously signed either the SF 189 or the SF 189-A, to execute SF 312 before receiving access to classified information. A person in such circumstances who has previously signed either the SF 189 or the SF 189-A is permitted, at his or her own choosing, to substitute a signed SF 312 for either the SF 189 or the SF 189-A. In these instances, agencies shall take all reasonable steps to dispose of the superseded nondisclosure agreement or to indicate on it that it has been superseded.

(e) The use of the "Security Debriefing Acknowledgement" portion of the SF 312 is optional at the discretion of the implementing agency.

(f) An authorized representative of a contractor, licensee, grantee, or other non-Government organization, acting as a designated agent of the United States, may witness the execution of the SF 312 by another non-Government employee, and may accept it on behalf of the United States. Also, an employee of a United States agency may witness the execution of the SF 312 by an employee, contractor, licensee or grantee of another United States agency, provided that an authorized United States Government official or, for non-Government employees only, a designated agent of the United States subsequently accepts by signature the SF 312 on behalf of the United States.

(g) The provisions of the SF 312, the SF 189, and the SF 189-A do not supersede the provisions of section 2302, title 5, United States Code, which pertain to the protected disclosure of information by Government employees, or any other laws of the United States.

(h)(1) *Modification of the SF 189.* The second sentence of paragraph 1 of every executed copy of the SF 189 is clarified to read:

> As used in this Agreement, classified information is marked or unmarked classified information, including oral communications, that is classified under the standards of Executive Order 12356, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security; and unclassified information that meets the standards for classification and is in the process of a classification determination as provided in sections 1.1(c) and 1.2(e) of Executive Order 12356, or under any other Executive order or statute that requires protection for such information in the interest of national security.

(2) *Scope of "classified information".* As used in the SF 312, the SF 189, and the SF 189-A, "classified information" is marked or unmarked classified information, including oral communications; and unclassified information that meets the standards for classification and is in the process of a classification determination, as provided in sections 1.1(c) and 1.2(e) of Executive Order 12356 or any other statute or Executive order that requires interim protection for certain information while a classification determination is pending. "Classified information" does not include unclassified information that may be subject to possible classification at some future date, but is not currently in the process of a classification determination.

(3) *Basis for liability.* A party to the SF 312, SF 189 or SF 189-A may be liable for disclosing "classified information" only if he or she knows or reasonably should know that: (i) The marked or unmarked information is classified, or meets the standards for classification and is in the process of a classification determination; and (ii) his or her action will result, or reasonably could result in the unauthorized disclosure of that information.

In no instance may a party to the SF 312, SF 189 or SF 189-A be liable for violating its nondisclosure provisions by disclosing information when, at the time of the disclosure, there is no basis to suggest, other than pure speculation, that the information is classified or in the process of a classification determination.

(4) *Modification of the SF 312, SF 189 and SF 189-A.*

(i) Each executed copy of the SF 312, SF 189 and SF 189-A, whether executed prior to or after the publication

of this rule, is amended to include the following paragraphs 10 and 11.

10. These restrictions are consistent with and do not supersede, conflict with or otherwise alter the employee obligations, rights or liabilities created by Executive Order 12356; section 7211 of title 5 U.S.C. (governing disclosures to Congress); section 1034 of title 10 U.S.C., as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5 U.S.C., as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 *et seq.*) (governing disclosures that could expose confidential Government agents), and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18 U.S.C., and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.

11. I have read this Agreement carefully and my questions, if any, have been answered. I acknowledge that the briefing officer has made available to me the Executive Order and statutes referenced in this Agreement and its implementing regulation (32 CFR 2003.20) so that I may read them at this time, if I so choose.

(ii) The first sentence of paragraph 7 of each executed copy of the SF 312, SF 189 and SF 189-A, whether executed prior to or after the publication of this rule, is amended to read:

I understand that all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law.

The second sentence of paragraph 7 of each executed copy of the SF 312 (September 1988 version), SF 189 and SF 189-A, which reads, "I do not now, nor will I ever, possess any right, interest, title or claim whatsoever to such information," and whether executed prior to or after the publication of this rule, is deleted.

(i) *Points of clarification.* (1) As used in paragraph 3 of SF 189 and SF-189-A, the word "indirect" refers to any situation in which the knowing, willful or negligent action of a party to the agreement results in the unauthorized disclosure of classified information even though the party to the agreement does not directly communicate, deliver or transmit classified information to a person who is not authorized to receive it.

(2) As used in paragraph 7 of SF 189, "information" refers to "classified information," exclusively.

(3) As used in the third sentence of paragraph 7 of SF 189 and SF 189-A, the words "all materials which have, or may have, come into my possession," refer to "all classified materials which have or may come into my possession," exclusively.

(j) Each agency must retain its executed copies of the SF 312, SF 189, and SF 189-A in file systems from which an agreement can be expeditiously retrieved in the event that the United States must seek its enforcement or a subsequent employer must confirm its prior execution. The original, or a legally enforceable facsimile that is retained in lieu of the original, such as microfiche, microfilm, computer disk, or electronic storage medium, must be retained for 50 years following its date of execution. For agreements executed by civilian employees of the United States Government, an agency may store the executed copy of the SF 312 and SF 189 in the United States Office of Personnel Management's Official Personnel Folder (OPF) as a long-term (right side) document for that employee. An agency may permit its contractors, licensees and grantees to retain the executed agreements of their employees during the time of employment. Upon the termination of employment, the contractors, licensee or grantee shall deliver the original or legally enforceable facsimile of the executed SF 312, SF 189 or SF 189-A of that employee to the Government agency primarily responsible for his or her classified work. A contractor, licensee or grantee of an agency participating in the Defense Industrial Security Program shall deliver the copy or legally enforceable facsimile of the executed SF 312, SF 189 or SF 189-A of a terminated employee to the Defense Industrial Secu-

sit. on in which the knowing, ul or negligent action of a party ne agreement results in the unauized disclosure of classified infor- on even though the party to the ement does not directly communi- deliver or transmit classified in- ation to a person who is not au- ized to receive it.

As used in paragraph 7 of SF 189, rmation" refers to "classified in- ation," exclusively.

As used in the third sentence of graph 7 of SF 189 and SF 189-A, words "all materials which have, ay have, come into my posses- refer to "all classified materials have or may come into my pos- n," exclusively.

Each agency must retain its exe- copies of the SF 312, SF 189, SF 189-A in file systems from an agreement can be expedi- y retrieved in the event that the d States must seek its enforce- or a subsequent employer must m its prior execution. The origi- r a legally enforceable facsimile s retained in lieu of the original, as microfiche, microfilm, comput- k, or electronic storage medium, be retained for 50 years follow- s date of execution. For agree- ex ted by civilian employees U. l States Government, an y may store the executed copy of F 312 and SF 189 in the United Office of Personnel Manage- s Official Personnel Folder as a long-term (right side) docu- for that employee. An agency ermit its contractors, licensees rantees to retain the executed ents of their employees during ne of employment. Upon the ter- on of employment, the contrac- icensee or grantee shall deliver ginal or legally enforceable fac- of the executed SF 312, SF 189 189-A of that employee to the ument agency primarily respon- or his or her classified work. A ctor, licensee or grantee of an participating in the Defense ial Security Program shall de- ne copy or legally enforceable le of the executed SF 312, SF SF 189-A of a terminated em- to the Defense Industrial Secu-

rity Clearance Office. Each agency shall inform ISOO of the file systems that it uses to store these agreements for each category of affected individuals.

(k) Only the National Security Council may grant an agency's request for a waiver from the use of the SF 312. To apply for a waiver, an agency must submit its proposed alternative nondisclosure agreement to the Director of ISOO, along with a justification for its use. The Director of ISOO will request a determination about the alternative agreement's enforceability from the Department of Justice prior to making a recommendation to the National Security Council. An agency that has previously received a waiver from the use of the SF 189 or the SF 189-A need not seek a waiver from the use of the SF 312.

(l) The national stock number for the SF 312 is 7540-01-280-5499.

[53 FR 38279, Sept. 29, 1988, as amended at 56 FR 2645, Jan. 23, 1991; 56 FR 27559, June 14, 1991]

§ 2003.21 Security Container Information: SF 700.

(a) SF 700 provides the names, addresses and telephone numbers of employees who are to be contacted if the security container to which the form pertains is found open and unattended. The form also includes the means to maintain a current record of the security container's combination and provides the envelope to be used to forward this information to the appropriate agency activity or official.

(b) SF 700 shall be used in all situations that call for the use of a security container information form. Agency-wide use of SF 700 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) Parts 2 and 2A of each completed copy of SF 700 shall be classified at the highest level of classification of the information authorized for storage in the security container. A new SF 700 must be completed each time the combination to the security container is changed as required by applicable executive order(s), statute(s) or implementing security regulations.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant an agency's application for a waiver from the use of SF 700. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number for the SF 700 is 7540-01-214-5372.

[50 FR 51826, Dec. 19, 1985]

§ 2003.22 Activity Security Checklist: SF 701.

(a) SF 701 provides a systematic means to make a thorough end-of-day security inspection for a particular work area and to allow for employee accountability in the event that irregularities are discovered.

(b) SF 701 shall be used in all situations that call for the use of an activity security checklist. Agency-wide use of SF 701 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) Completion, storage and disposition of SF 701 will be in accordance with each agency's security regulations.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant an agency's application for a waiver from the use of SF 701. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number for the SF 701 is 7540-01-213-7899.

[50 FR 51826, Dec. 19, 1985]

§ 2003.23 Security Container Check Sheet: SF 702.

(a) SF 702 provides a record of the names and times that persons have opened, closed or checked a particular container that holds classified information.

(b) SF 702 shall be used in all situations that call for the use of a security container check sheet. Agency-wide

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1-24 PREPUBLICATION REVIEW MATTERS

(1) This section provides background information regarding the FBI's prepublication review program and reemphasizes the responsibilities of all employees under the regulations governing the prepublication review process.

(2) The prepublication review requirement, which was designed to eliminate unauthorized disclosure of information from FBI files, of classified or sensitive information, and disclosures which would otherwise violate Federal statutes, regulations, or policy, has been in effect for many years. The FBI's Employment Agreement (FD-291) traditionally has been cited as the authority requiring employees, past and present, to submit, and FBI Headquarters to review, written material prior to publication. Prepublication review by the Office of Public Affairs (OPA), in certain instances, is specifically required under provisions of Title 28, Code of Federal Regulations (CFR), Section 17.144.

(3) All employees have an obligation to adhere to the following guidelines regarding any written product for which they seek publication:

(a) Current and former employees must submit their manuscripts to OPA for prepublication review prior to discussing it with, or showing it to, a publisher, co-author, ghost writer, or any other person who is not authorized to have access to it.

(b) All complete manuscripts, fiction or nonfiction, written by past or present employees, other than in their official capacity for inclusion in publications of the FBI, the Department of Justice or the Government Printing Office, must be furnished to OPA for a determination as to whether specific manuscripts require prepublication review.

(c) Manuscripts should be submitted by airtel from the author's Special Agent in Charge (SAC) or by memorandum from the Assistant Director of the author's FBIHQ division to the OPA. Such requests for prepublication review should include all pertinent information regarding the preparation/proposed publication of the manuscript, such as:

1. Whether the manuscript was prepared on Bureau time and if it was a previously approved FBI project.

2. Whether FBI records were accessed in connection with its preparation. Note all employees wishing to access FBI records in a capacity other than their official status must file a

request with the Freedom of Information/Privacy Acts Section, |Information|Management Division, prior to accessing those records. (See MAOP, Part I, Section 1-14(5).)

3. Whether the manuscript contains information obtained in the course of the author's official duties. (See MAOP, Part I, Section 1-14(5).)

4. The publisher and the type of publication to which they will submit their manuscripts, i.e., professional law enforcement journal.

5. Whether the author will receive monetary or other compensation for the publication of his/her manuscript. (See MAOP, Part I, Sections 1-12(1), 1-14(4), 1-16, and 20-6.)

6. Whether the author intends to identify himself or herself in the byline as a Special Agent or employee of the FBI, the Department of Justice or the Federal Government. (See MAOP, Part I, Section 1-14(4).)

7. Any special arrangements with the publisher or other considerations which would logically impact upon the prepublication review process.

(4) OPA will continue to administer and coordinate the prepublication review process with other appropriate FBI Headquarters Divisions.

(5) OPA will refer manuscripts, excerpts from manuscripts or policy matters to the substantive divisions by formal memorandum. Pertinent information will be provided to enable those divisions to respond to OPA by addendum in a timely manner, recognizing that Title 28, CFR, Section 17.144, requires OPA to respond to prepublication review requests within 30 working days of receipt.

(6) Upon determining whether, or under what conditions, approval for publication is granted, OPA will so advise the author by airtel or formal memorandum directed to the appropriate SAC or Assistant Director.

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continuous need-to-know evaluation. For employees not having a valid need-to-know for classified information, the Security Programs Manager is to initiate a memorandum to administratively withdraw or reduce the level of access authorized.

§ 17.142 Security Officers.

Security Officers are responsible to their appointing authority for implementation and administration of the Document Security Program as delegated and assigned in accordance with Paragraph 6.e. of Department Order 2600.2A.

§ 17.143 Emergency planning.

Each Office, Board, Division or Bureau shall have current plans for the protection, removal, or destruction of classified material in case of fire, natural disaster, civil disturbance, or enemy action. These plans shall include the disposition of classified information located in the United States and in foreign countries.

§ 17.144 Employees.

(a) All persons granted access to classified information in the course of their employment at the Department of Justice are required to safeguard that information from unauthorized disclosure. This nondisclosure obligation is imposed by statutes, regulations, access agreements, and the fiduciary relationships of the persons who are entrusted with classified information in the performance of their duties. The nondisclosure obligation continues after Department of Justice employment terminates. In addition, each employee having access to classified information is personally responsible for becoming familiar with and adhering to the provisions of this regulation.

(b) All employees (except those of the Federal Bureau of Investigation which has its own regulations on this matter) with access to National Security Information are required to report to the Department Security Officer any close personal or social relationship with a foreign national, including foreign press representatives. This requirement does not include contacts or relationships developed within the scope of employment and known to the employee's supervisor. Any contacts with a foreign national which result in unofficial requests for job-related information or suspicion on the part of the employee with regard to the protection of National Security Information must also be reported.

(c) All employees of the Department (including contract employees and non-contractor personnel outside the Executive Branch) are to be aware of and comply with regulations concerning travel outside the continental United States. These regulations are summarized below:

(1) Pursuant to the provisions of Director of Central Intelligence Directive 1/20 entitled, "Security Policy Concerning Travel and Assignment of Personnel with Access to Sensitive Compartmented Information," Department personnel who have access to Sensitive Compartmented Information are required to advise the Department Security Office in writing, of any travel, whether official or unofficial, outside of the continental United States. Upon the determination of the Department Security Officer, it may be necessary that such personnel be provided a Defensive Security Briefing, a formal advisory which alerts traveling personnel to the potential for harassment, provocation, or entrapment.

(2) Employees, contractor personnel and non-contractor personnel outside the Executive Branch having access to classified information under the control of the Department are also required to advise the Department Security Officer of any travel outside of the United States and its territories as soon as the travel plan is known. The Department Security Officer will determine whether a Defensive Security Briefing is necessary based upon the foreign countries to be visited, the sensitivity of the employee's current position and the level of access to classified information.

(3) All regular or contract employees of the Department traveling to Communist-controlled countries for Government business or for personal reasons must be provided a Defensive Security Briefing whether or not they have access to classified information.

The Security Programs Manager for the employee's organization is to be advised by the employee in advance of travel to allow adequate time to receive the briefing required by the sensitivity or critical nature of the employee's current position. Should an employee have particular security concerns about travel to other foreign countries, he may request guidance from the Department Security Officer.

(d) All Department of Justice employees (including contract employees) granted access to classified information in the course of their employment with the Department, shall be required to sign a nondisclosure agreement concerning the protection of national security information and a statement that they understand and shall conform to the provisions of this regulation.

(e) All employees with authorized access to Sensitive Compartmented Information shall be required to sign nondisclosure agreements containing a provision for prepublication review to assure deletion of Sensitive Compartmented Information and other classified information. Sensitive Compartmented Information is information that not only is classified for national security reasons as Top Secret, Secret, or Confidential, but also is subject to special access and handling requirements because it involves or derives from particularly sensitive intelligence sources and methods. The prepublication review provision will require that Department of Justice employees who are authorized access to Sensitive Compartmented Information submit certain material, described further in the agreement, to the Department prior to its publication to provide an opportunity for determining whether an unauthorized disclosure of Sensitive Compartmented Information or other classified information would occur as a consequence of its publication.

(f) It must be recognized at the outset that it is not possible to anticipate each and every question that may arise under these agreements. The Department will endeavor to respond, however, as quickly as possible to specific inquiries by individuals concerning whether specific materials require prepublication review. Persons subject to these requirements are invited to discuss their plans for public disclosures of information that may be subject to these obligations with authorized Department representatives at an early stage, or as soon as circumstances indicate these policies must be considered. Except as provided in paragraph (s) of this section for FBI personnel, all questions concerning these obligations should be addressed to the Counsel for Intelligence Policy, Department of Justice, 10th & Constitution Avenue, NW., Washington, DC 20530; the official views of the Department on whether specific materials require prepublication review may only be expressed by the Counsel for Intelligence Policy and persons should not act in reliance upon the views of other Department personnel.

(g) Prepublication review is required only as expressly provided for in a nondisclosure agreement. However, all persons who have had access to classified information have an obligation to avoid unauthorized disclosures of such information and are subject to enforcement actions if they disclose classified information in an unauthorized manner. Therefore, persons who have such access but are not otherwise required to submit to prepublication review under the terms of an employment or other nondisclosure agreement are encouraged to submit material for prepublication review voluntarily if they believe that such material may contain classified information. Where there is any doubt, individuals are urged to request prepublication review to avoid unauthorized disclosure and for their own protection.

(h) The nature and extent of the material that is required to be submitted for prepublication review under nondisclosure agreements is expressly provided for in those agreements. It should be clear, however, that such requirements do not extend to any materials that exclusively contain information lawfully obtained at a time when the author has no employment, contract, or other relationship with the U.S. Government or that contain information exclusively acquired outside the scope of employment.

(i) A person's obligation to submit material for prepublication review remains identical whether such person actually prepares the material or causes or assists another person, such as a ghost writer, spouse or friend, or editor in preparing the material. Material covered by a nondisclosure agreement requiring prepublication review must be submitted prior to discussing it with or showing it to a publisher, coauthor, or any other person who is not authorized to have access to it. In this regard, it should be noted that a failure to submit such material for prepublication review constitutes a breach of the obligation and exposes the author to remedial action even in cases where the published material does not actually contain Sensitive Compartmented Information or classified information. *See Snepp* v. *United States*, 444 U.S. 507 (1980).

(j) The requirement to submit material for prepublication review is not limited to any particular type of material or disclosure. Written materials include not only book manuscripts but all other forms of written materials intended for public disclosure, such as (but not limited to) newspaper columns, magazine articles, letters to the editor, book reviews, pamphlets, and scholarly papers. Because fictional treatment may convey factual information, fiction material must also be submitted if it is based upon or reflects information required to be submitted for review under the terms of a nondisclosure agreement that includes an express prepublication review provision.

(k) Oral statements are also within the scope of a prepublication review requirement when based upon written materials, such as an outline of the statements to be made. There is no requirement to prepare written materials for review, however, unless there is reason to believe in advance that oral statements may contain Sensitive Compartmented Information or other information required to be submitted for review under the terms of nondisclosure agreement. Thus, a person may participate in an oral presentation where there is no opportunity for prior preparation (e.g., news interview, panel discussion) unless there is reason to believe in advance that such oral expression may contain Sensitive Compartmented Information or other information that must be submitted for review. This recognition of the problems inherent in oral representations does not, of course, exempt present or former employees from liability for any unauthorized disclosures of Sensitive Compartmented Information or classified information that may occur in the course of even extemporaneous oral expressions.

(l) Written materials that consist solely of personal views, opinions or judgments and do not contain or imply any statement of fact that would fall within the terms of a nondisclosure agreement requiring prepublication review, are not subject to prepublication review requirements. For example, public speeches or publication of articles on such topics as proposed legislation or foreign policy do not require prepublication review as long as the material does not directly or implicitly constitute a factual statement that falls within the purview of a nondisclosure agreement requiring prepublication review. Of course, in some circumstances the expression of "opinion" may in fact disclose information that requires adherence to a prepublication review obligation required under a nondisclosure agreement. Again, consultation is urged to ensure conformity to this obligation.

(m) Obviously, the purposes of prepublication review will be frustrated where the material in question already has been disseminated to unauthorized persons. In such cases, comparison of the material before and after the review would reveal to the unauthorized persons which items of information were considered to be classified and had been deleted at the Department's request. Consequently, the Department will consider a prepublication review obligation to have been breached in any case, whether or not the written material is subsequently submitted to the Department of prepublication review, where it already has been circulated to publishers or reviewers or has otherwise been made available to unauthorized persons. While the Department reserves the right to review such material for pur-

poses of mitigating damage that may result from the disclosure of classified information, such action shall not prevent the U.S. Government and the Department from pursuing all appropriate remedies available under law as a consequence of the failure to submit the materials for prior review and any unauthorized disclosure of Sensitive Compartmented Information or classified information that may have occurred as a result.

(n) Material submitted for prepublication review will be reviewed solely for the purpose of identifying and preventing the disclosure of Sensitive Compartmented Information and other classified information. This review will be conducted in an impartial manner without regard to whether the material is critical or favorable to the Department. No effort will be made to delete embarrassing or critical statements that are unclassified. Materials submitted for review will be disseminated to other persons or agencies only to the extent necessary to identify classified information.

(o) The Counsel for Intelligence Policy (or, in the case of FBI employees, the FBI's Office of Congressional and Public Affairs) will respond substantively to prepublication review requests within 30 working days of receipt of the submission. Priority shall be given to reviewing speeches, newspaper articles, and other materials that the author seeks to publish on an expedited basis. The Counsel's decisions may be appealed to the Deputy Attorney General, who will process appeals within 15 working days of receipt of the appeal. (See § 17.144(s)(3) concerning appeal procedures for FBI employees.) The Deputy Attorney General's decision is final and not subject to further administrative appeal. Persons who are dissatisfied with the final administrative decision may obtain judicial review either by filing an action for declaratory relief or by giving the Department notice of their intention to proceed despite the Department's requests for deletions of classified information, and a reasonable opportunity (30 working days) to file a civil action seeking a court order prohibiting disclosure. Of course, until any civil action is resolved, employees remain under an obligation not to disclose or publish information determined by the Government to be classified.

(p) Nothing in this subpart should be construed to alter or waive the Department's authority to seek any remedy available to it to prohibit or punish the unauthorized disclosure of classified information.

(q) A former Department of Justice employee who subsequently receives a security clearance or Sensitive Compartmented Information access approval from another department or agency is permitted to satisfy any obligation to the Department of Justice regarding prepublication review by making submissions to the department or agency that last granted the individual either a security clearance or Sensitive Compartmented Information access approval.

(r) The obligations of Department of Justice employees as described in this subpart also apply with equal force to contractors who are authorized by the Department to have access to Sensitive Compartmented Information or other classified information.

(s) The obligations of Department of Justice employees described in this subpart apply with equal force to employees of the Federal Bureau of Investigation with the following exceptions and *provisos:*

(1) Nothing in this subpart shall supersede or alter obligations assumed under the basic FBI employment agreement;

(2) FBI employees required to sign nondisclosure agreements containing a provision for prepublication review pursuant to this subpart shall submit materials for review to the Assistant Director, Office of Congressional and Public Affairs. Such individuals shall also submit questions as to whether specific materials require prepublication review under such agreements to that Office for resolution. Where such questions raise policy questions or concern significant issues of interpretation under such an agreement, the Assistant Director, Office of Congressional and Public Affairs, shall consult with the Counsel for Intelligence Policy prior to responding to the inquiry;

(3) Decisions of the Assistant Director, Office of Congressional and Public Affairs, concerning the deletion of classified information, may be appealed to the Director, Federal Bureau of Investigation, who will process appeals within 15 working days of receipt. Persons who are dissatisfied with the Director's decision may, at their option, appeal further to the Deputy Attorney General as provided in paragraph (o) of this section. Judicial review, as set forth in that paragraph, is available following final agency action in the form of a decision by the Director or, if the appeal process in paragraph (o) of this section is pursued, the Deputy Attorney General.

Subpart L—Security Violations and Administrative Sanctions

§ 17.145 Violations subject to sanctions.

(a) Officers and employees of the Department and its contractors, grantees and consultants are subject to appropriate administrative sanctions if they:

(1) Knowingly, willfully or negligently and without authorization disclose to unauthorized persons information classified under Executive Order 12356 or prior orders or compromise classified information through negligence;

(2) Knowingly and willfully classify or continue the classification of information in violation of Executive Order 12356, its implementing directives or this regulation; or

(3) Knowingly and willfully violate any other provision of Executive Order 12356, any implementing directives or this regulation.

(b) Sanctions include but are not limited to warning notices, reprimands, termination of classification authority, suspension or termination of security clearance, and as permitted by law, suspension without pay, forfeiture of pay, removal or dismissal. Sanctions will be imposed upon any person subject to these regulations and responsible for a violation specified under this subpart as determined by the appropriate Department official upon recommendation by the Office of Professional Responsibility. In cases involving the compromise of classified information, the Attorney General, upon receiving a recommendation from the Office of Professional Responsibility, shall determine and impose appropriate sanctions.

§ 17.146 Reporting security violations.

Any person subject to these regulations who suspects or has knowledge of a violation pursuant to § 17.145 (including the known or suspected loss or compromise of National Security Information) shall promptly report and confirm in writing the circumstances. If the loss itself is classifiable, secure telecommunications must be used for the initial report. The loss must be confirmed in writing to the Security Programs Manager of the Office, Board, Division or Bureau concerned or to that official's appropriate Security Programs Manager or representative. The Security Programs Manager of the organization under whose cognizance the loss occurred shall take the following action forthwith:

(a) Prompt notification of the violation to the Department Security Officer, to the Office of Professional Responsibility, to the origination office and to any interested department or agency, if appropriate. In the event of disagreement as to which Office, Board Division or Bureau is the cognizant agency, the Department Security Officer will promptly decide and advise the concerned Security Programs Managers by telephone.

(b) The submission of a written report to the Department Security Officer and the Office of Professional Responsibility. Such report shall include the date the violation occurred, if known; the date of the discovery of the violation; the specific identification of the information involved in the violation; the national security classification or any caveats regarding the information involved; the probability of loss or compromise; an assessment of the damage incurred from a national security standpoint; corrective measures taken; the person(s) responsible for the violation; and recommended administrative, disciplinary or legal action which should be taken. The written report should be submitted no

PERSONAL ATTENTION
MEMORANDUM 20-90

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

July 23, 1990

MEMORANDUM TO ALL SPECIAL AGENTS IN CHARGE

RE: SECURITY AWARENESS TRAINING FOR ALL FBI EMPLOYEES

Recent public disclosures of information relating to cases dealing with FBI classified National Security Information (NSI) and sensitive FBI information have heightened my concerns about FBI procedures for handling and safeguarding such information. I have directed that a formalized process be developed for ensuring all employees are regularly informed of their information security responsibilities.

Effective upon receipt of this communication, FBIHQ and field divisions will ensure the Security Officer's Briefing Book issued to all FBI field and FBIHQ division Security Officers (SOs) shall be utilized in providing Security Awareness Briefings and specialized training on the topics of: 1. security awareness; 2. proper marking, handling, storage, and transmittal of classified NSI and safeguarding sensitive FBI information; 3. the Foreign and Domestic Intelligence Threat; and 4. proper security procedures to be followed within the employee's respective FBI division.

In addition, all FBI personnel involved in the management, operation, programming, maintenance, or use of FBI Automated Data Processing and Telecommunications (ADPT) systems must be made aware of the threats to and vulnerabilities of those systems, and appropriate security countermeasures.

These briefings are to be afforded to all FBI employees on a semiannual basis. This may be done at the All Employees Conferences or Agents general conferences. All new employees who enter on duty or those transferred to an FBI field division or FBIHQ are to receive these briefings upon their arrival for duty at their assignment.

All FBI contractor personnel involved in classified contracts must be provided security briefings targeting all security aspects of their contracts.

All specialized training on the topics of security awareness and Security Awareness Briefings provided to FBI employees shall be documented and placed on record in the security/investigative section of the employee's personnel file.

SECURITY INDOCTRINATION OF FBI EMPLOYEES

The following points must be covered; however, the briefing is by no means limited to these points:

1. General statement as to the confidential nature of the Bureau's work, security of space and information, and security of Bureau property.

2. All employees should be alert to the possibility that individuals who are not entitled to enter Bureau space might attempt to enter. An unknown individual should be challenged and his/her identity immediately established. When checking credentials, such as an identification card, the check should be sufficient to establish the holder is identical with the photograph he/she presents.

3. Maintenance and similar people must identify themselves when they enter Bureau space and must be under appropriate supervision at all times.

4. Bureau space accessible from public space must be locked at all times when unoccupied, even though persons leaving the space may be absent only a brief period, and all classified material must be secured in its appropriate security container.

5. Particular care must be given to the security of such matters as messenger boxes maintained on desks and/or tables in Bureau space which is accessible from public space.

6. When a telephone call is received concerning a request for official information, classified or otherwise, if there is the slightest question as to the identity of the caller, a return call must be made and no information may be furnished without establishing the identity of the caller. No classified information may be discussed over nonsecure lines.

7. Trash of an official nature must be disposed of through the appropriate procedures, such as the use of white-rimmed wastebaskets, with particular care that these baskets are not used at the close of business after they are emptied. Official trash and one-strike typewriter ribbon film accumulated after the collection must be placed under lock and key.

8. Before securing any Bureau space for the evening, the last employee in each room must check to make certain all classified material is properly locked in cabinets and all file cabinets, windows, and doors are shut and securely locked, where appropriate.

9. Loss or destruction of certain Bureau property has security ramifications and must be vigilantly avoided. Loss or theft of Bureau property must be immediately reported to the employee's superior.

10. Whenever Bureau mail of any type is carried on elevators, in corridors, or in other public space, the material should be covered.

11. Bureau work should not be taken into rest rooms or lounges at any time.

12. Discussion of Bureau work with fellow employees should be only on a need-to-know basis. Discussion of the Bureau's work with non-Bureau employees is strictly prohibited. This includes even the closest relatives and friends.

13. Employees should not needlessly identify themselves as FBI employees, particularly in restaurants and other public places where they might easily be within earshot of representatives of Foreign Intelligence Services. Neither should employees discuss Bureau work at luncheons, in carpools, or in other areas outside the working space, even with a social group made up of Bureau employees only.

14. Prohibition of discussion of Bureau work and information with unauthorized individuals extends after the employee's termination of service with the FBI.

15. All types of arrests and civil litigation involving Bureau employees must be reported to the employee's supervisor.

16. Employees must report all travel outside the United States, with the exception of approved procedures within selected border offices.

17. All contact with foreign nationals from designated countries must be reported, as well as any unusual or persistent requests for information of a confidential nature from unauthorized personnel, regardless of the circumstances.

18. Employees are prohibited from making copies for themselves of any reports or correspondence they prepare in the course of their official duties, except copies of expense vouchers or of Form CA-1 (Employee's Notice of Injury or Occupational Disease). Upon separation from the Bureau, every employee must return any official documents made or received while in the Bureau's service, except for such items as originals or copies of letters of commendation, censure, or promotion, and copies of expense accounts and Form CA-1.

19. Employees are required to submit an FD-292, "Change in Marital Status" form, 60 days prior to the day of marriage, if practicable. Immediately after the marriage occurs, an FD-207, "Name Change and/or Marital Status," form must be submitted.

20. Employees with Sensitive Compartmented Information access are required to report all individuals (non-Bureau/nonmembers of immediate family) with whom they reside or intend to reside for a period of 30 days or more.

21. Department of Justice regulations under Executive Order 12356 provide that "(a) Officers and employees of the Department and its contractors, grantees and consultants are subject to appropriate administrative sanctions if they: (1) Knowingly, willfully or negligently and without authorization disclose to unauthorized persons information classified under Executive Order 12356 or prior orders or compromise classified information through negligence; (2)

Knowingly and willfully classify or continue the classification of information in violation of Executive Order No. 12356, its implementing directives or this regulation; or (3) Knowingly and willfully violate any other provision of Executive Order 12356, any implementing directives or this regulation."

22. Instructions must be provided to all employees as to the basic classification markings that must appear on any classified documents, as well as the proper procedures for the storage, handling, and transmittal of same in accordance with the Manual of Investigative Operations and Guidelines (MIOG), Part II, Section 26, and in accordance with the Foreign Counterintelligence Manual, Part II, Section 1, both of which are entitled "Classified National Security Information and Material." In addition, instructions must be provided to all FBI employees concerning security of microcomputers as set forth in MIOG, Part II, Section 16-18.8, entitled "Security."

Each division head is being held responsible for ensuring our employees are properly trained in their information security responsibilities. The utilization of the Security Officer is strongly suggested to present and document a comprehensive security awareness training curriculum for our employees.

This memorandum supersedes those guidelines set forth in Memoranda to All Special Agents in Charge 67-16(A) dated March 14, 1967, and 13-72(A) dated July 25, 1972, entitled "Security Indoctrination of FBI Employees." Appropriate manual changes are forthcoming.

William S. Sessions
Director

1-3.6 Copies of Official Correspondence and Documents

Employees are not to make copies for themselves of any reports or correspondence they prepare in the course of their official duties except copies of expense vouchers, Form CA-1 (Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation), nor should they make or maintain possession of copies of official Bureau documents if they have no justifiable need to know the information contained in them. On separation from the Bureau, every employee must return any official documents made or received while in the Bureau's service except for items such as those enumerated above and originals of letters of appointment, commendation, censure or promotion. (See also Bureau rule on disclosure of information set out in Section 1-19 below.)

EFFECTIVE: 11/24/89

APPENDIX TO SUBCHAPTER E—TEMPORARY REGULATIONS

[EDITORIAL NOTE: The following is a list of temporary regulations, except delegations of authority, which relate to Federal property management and are in effect as of the revision date of this volume.]

FPMR Temp. Reg.	Subject	Expires	FR Publication
[1] E-90	Ordering items from the GSA Supply Catalog.	July 31, 1989	53 FR 29234, Aug. 3, 1988.
[1] E-90, Supp. 1	do	July 31, 1990	54 FR 31030, July 26, 1989.
[1] E-90, Supp. 2	do	July 31, 1991	56 FR 33309, Aug. 15, 1990.

[1] This temporary regulation appears in full text below.

6.5(b) of title 28 of the Code of Federal Regulations, I hereby delegate authority to the United States Attorney for the District of Columbia to:

(1) Respond initially to requests;

(2) Grant and deny access to records;

(3) Communicate directly with the Office of Information and Privacy concerning administrative appeals; and

(4) Prepare affidavits, litigation reports, and other necessary documents in preparation for civil litigation in suits pursuant to 5 U.S.C. 552(4)(B).

(b) This authority is limited to those records which are under the custody and control of the United States Attorney for the District of Columbia. The authority delegated herein may be redelegated.

(c) This directive is effective immediately.

[49 FR 11625, Mar. 27, 1984]

Subpart B—Production or Disclosure in Federal and State Proceedings

SOURCE: Order No. 919-80, 45 FR 83210, Dec. 18, 1980, unless otherwise noted.

§ 16.21 Purpose and scope.

(a) This subpart sets forth procedures to be followed with respect to the production or disclosure of any material contained in the files of the Department, any information relating to material contained in the files of the Department, or any information acquired by any person while such person was an employee of the Department as a part of the performance of that person's official duties or because of that person's official status:

(1) In all federal and state proceedings in which the United States is a party; and

(2) In all federal and state proceedings in which the United States is not a party, including any proceedings in which the Department is representing a government employee solely in that employee's individual capacity, when a subpoena, order, or other demand (hereinafter collectively referred to as a "demand") of a court or other authority is issued for such material or information.

(b) For purposes of this subpart, the term *employee of the Department* includes all officers and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of the Attorney General of the United States, including U.S. Attorneys, U.S. Marshals, U.S. Trustees and members of the staffs of those officials.

(c) Nothing in this subpart is intended to impede the appropriate disclosure, in the absence of a demand, of information by Department law enforcement agencies to federal, state, local and foreign law enforcement, prosecutive, or regulatory agencies.

(d) This subpart is intended only to provide guidance for the internal operations of the Department of Justice, and is not intended to, and does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States.

§ 16.22 General prohibition of production or disclosure in Federal and State proceedings in which the United States is not a party.

(a) In any federal or state case or matter in which the United States is not a party, no employee or former employee of the Department of Justice shall, in response to a demand, produce any material contained in the files of the Department, or disclose any information relating to or based upon material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of

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xcept delegations of authority, which relate to Federal the revision date of this volume.]

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2 General prohibition of production r disclosure in Federal and State pro- eedings in which the United States is ot a party.

In any federal or state case or er in which the United States is a party, no employee or former oyee of the Department of Jus- shall, in response to a demand, uce any material contained in the of the Department, or disclose information relating to or based material contained in the files of Department, or disclose any infor- on or produce any material ac- d as part of the performance of

that person's official duties or because of that person's official status without prior approval of the proper Department official in accordance with §§ 16.24 and 16.25 of this part.

(b) Whenever a demand is made upon an employee or former employee as described in paragraph (a) of this section, the employee shall immediately notify the U.S. Attorney for the district where the issuing authority is located. The responsible United States Attorney shall follow procedures set forth in § 16.24 of this part.

(c) If oral testimony is sought by a demand in any case or matter in which the United States is not a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by his attorney, setting forth a summary of the testimony sought and its relevance to the proceeding, must be furnished to the responsible U.S. Attorney. Any authorization for testimony by a present or former employee of the Department shall be limited to the scope of the demand as summarized in such statement.

(d) When information other than oral testimony is sought by a demand, the responsible U.S. Attorney shall request a summary of the information sought and its relevance to the proceeding.

§ 16.23 General disclosure authority in Federal and State proceedings in which the United States is a party.

(a) Every attorney in the Department of Justice in charge of any case or matter in which the United States is a party is authorized, after consultation with the "originating component" as defined in § 16.24(a) of this part, to reveal and furnish to any person, including an actual or prospective witness, a grand jury, counsel, or a court, either during or preparatory to a proceeding, such testimony, and relevant unclassified material, documents, or information secured by any attorney, or investigator of the Department of Justice, as such attorney shall deem necessary or desirable to the discharge of the attorney's offical duties: *Provided,* Such an attorney shall consider, with respect to any disclosure, the factors set forth in § 16.26(a) of this part: *And further provided,* An attorney shall not reveal or furnish any material, documents, testimony or information when, in the attorney's judgment, any of the factors specified in § 16.26(b) exists, without the express prior approval by the Assistant Attorney General in charge of the division responsible for the case or proceeding, the Director of the Executive Office for United States Trustees (hereinafter referred to as "the EOUST"), or such persons' designees.

(b) An attorney may seek higher level review at any stage of a proceeding, including prior to the issuance of a court order, when the attorney determines that a factor specified in § 16.26(b) exists or foresees that higher level approval will be required before disclosure of the information or testimony in question. Upon referral of a matter under this subsection, the responsible Assistant Attorney General, the Director of EOUST, or their designees shall follow procedures set forth in § 16.24 of this part.

(c) If oral testimony is sought by a demand in a case or matter in which the United States is a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by the party's attorney setting forth a summary of the testimony sought must be furnished to the Department attorney handling the case or matter.

§ 16.24 Procedure in the event of a demand where disclosure is not otherwise authorized.

(a) Whenever a matter is referred under § 16.22 of this part to a U.S. Attorney or, under § 16.23 of this part, to an Assistant Attorney General, the Director of the EOUST, or their designees (hereinafter collectively referred to as the "responsible official"), the responsible official shall immediately advise the official in charge of the bureau, division, office, or agency of the Department that was responsible for the collection, assembly, or other preparation of the material demanded or that, at the time the person whose testimony was demanded acquired the information in question, employed such person (hereinafter collectively

referred to as the "originating component"), or that official's designee. In any instance in which the responsible official is also the official in charge of the originating component, the responsible official may perform all functions and make all determinations that this regulation vests in the originating component.

(b) The responsible official, subject to the terms of paragraph (c) of this section, may authorize the appearance and testimony of a present or former Department employee, or the production of material from Department files if:

(1) There is no objection after inquiry of the originating component;

(2) The demanded disclosure, in the judgment of the responsible official, is appropriate under the factors specified in § 16.26(a) of this part; and

(3) None of the factors specified in § 16.26(b) of this part exists with respect to the demanded disclosure.

(c) It is Department policy that the responsible official shall, following any necessary consultation with the originating component, authorize testimony by a present or former employee of the Department or the production of material from Department files without further authorization from Department officials whenever possible: *Provided,* That, when information is collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of the Department or by the EOUST, the Assistant Attorney General in charge of such a division or the Director of the EOUST may require that the originating component obtain the division's or the EOUST's approval before authorizing a responsible official to disclose such information. Prior to authorizing such testimony or production, however, the responsible official shall, through negotiation and, if necessary, appropriate motions, seek to limit the demand to information, the disclosure of which would not be inconsistent with the considerations specified in § 16.26 of this part.

(d)(1) In a case in which the United States is not a party, if the responsible U.S. attorney and the originating component disagree with respect to the appropriateness of demanded testimony or of a particular disclosure, or if they agree that such testimony or such a disclosure should not be made, they shall determine if the demand involves information that was collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of this Department or the EOUST. If so, the U.S. attorney shall notify the Director of the EOUST or the Assistant Attorney General in charge of the division responsible for such litigation or investigation, who may:

(i) Authorize personally or through a Deputy Assistant Attorney General, the demanded testimony or other disclosure of the information if such testimony or other disclosure, in the Assistant or Deputy Assistant Attorney General's judgment or in the judgment of the Director of the EOUST, is consistent with the factors specified in § 16.26(a) of this part, and none of the factors specified in § 16.26(b) of this part exists with respect to the demanded disclosure;

(ii) Authorize, personally or by a designee, the responsible official, through negotiations and, if necessary, appropriate motions, to seek to limit the demand to matters, the disclosure of which, through testimony or documents, considerations specified in § 16.26 of this part, and otherwise to take all appropriate steps to limit the scope or obtain the withdrawal of a demand; or

(iii) If, after all appropriate steps have been taken to limit the scope or obtain the withdrawal of a demand, the Director of the EOUST or the Assistant or Deputy Assistant Attorney General does not authorize the demanded testimony or other disclosure, refer the matter, personally or through a Deputy Assistant Attorney General, for final resolution to the Deputy or Associate Attorney General, as indicated in § 16.25 of this part.

(2) If the demand for testimony or other disclosure in such a case does not involve information that was collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of this Department, the originating component shall decide whether disclosure is appropriate, except that, when espe-

r of a particular disclosure, or if agree that such testimony or a disclosure should not be made, shall determine if the demand in- s information that was collected, ıbled, or prepared in connection litigation or an investigation su- sed by a division of this Depart- or the EOUST. If so, the U.S. at- y shall notify the Director of the ST or the Assistant Attorney ral in charge of the division re- ible for such litigation or investi- ı, who may:

Authorize personally or through ›uty Assistant Attorney General, emanded testimony or other dis- e of the information if such tes- y or other disclosure, in the As- t or Deputy Assistant Attorney al's judgment or in the judg- of the Director of the EOUST, is tent with the factors specified in (a) of this part, and none of the s specified in § 16.26(b) of this exists with respect to the de- d disclosure;

Authorize, personally or by a ee, the responsible official, h negotiations and, if necessary, oria motions, to seek to limit mand to matters, the disclosure ch, through testimony or docu- considerations specified in of this part, and otherwise to l appropriate steps to limit the or obtain the withdrawal of a ; or

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cially significant issues are raised, the responsible official may refer the matter to the Deputy or Associate Attorney General, as indicated in § 16.25 of this part. If the originating component determines that disclosure would not be appropriate and the responsible official does not refer the matter for higher level review, the responsible official shall take all appropriate steps to limit the scope or obtain the withdrawal of a demand.

(e) In a case in which the United States is a party, the Assistant General or the Director of the EOUST responsible for the case or matter, or such persons' designees, are authorized, after consultation with the originating component, to exercise the authorities specified in paragraph (d)(1)(i) through (iii) of this section: *Provided*, That if a demand involves information that was collected, assembled, or prepared originally in connection with litigation or an investigation supervised by another unit of the Department, the responsible official shall notify the other division or the EOUST concerning the demand and the anticipated response. If two litigating units of the Department are unable to resolve a disagreement concerning disclosure, the Assistant Attorneys General in charge of the two divisions in disagreement, or the Director of the EOUST and the appropriate Assistant Attorney General, may refer the matter to the Deputy or Associate Attorney General, as indicated in § 16.25(b) of this part.

(f) In any case or matter in which the responsible official and the originating component agree that it would not be appropriate to authorize testimony or otherwise to disclose the information demanded, even if a court were so to require, no Department attorney responding to the demand should make any representation that implies that the Department would, in fact, comply with the demand if directed to do so by a court. After taking all appropriate steps in such cases to limit the scope or obtain the withdrawal of a demand, the responsible official shall refer the matter to the Deputy or Associate Attorney General, as indicated in § 16.25 of this part.

(g) In any case or matter in which the Attorney General is personally involved in the claim of privilege, the responsible official may consult with the Attorney General and proceed in accord with the Attorney General's instructions without subsequent review by the Deputy or Associate Attorney General.

§ 16.25 Final action by the Deputy or Associate Attorney General.

(a) Unless otherwise indicated, all matters to be referred under § 16.24 by an Assistant Attorney General, the Director of the EOUST, or such person's designees to the Deputy or Associate Attorney General shall be referred (1) to the Deputy Attorney General, if the matter is referred personally by or through the designee of an Assistant Attorney General who is within the general supervision of the Deputy Attorney General, or (2) to the Associate Attorney General, in all other cases.

(b) All other matters to be referred under § 16.24 to the Deputy or Associate Attorney General shall be referred (1) to the Deputy Attorney General, if the originating component is within the supervision of the Deputy Attorney General or is an independent agency that, for administrative purposes, is within the Department of Justice, or (2) to the Associate Attorney General, if the originating component is within the supervision of the Associate Attorney General.

(c) Upon referral, the Deputy or Associate Attorney General shall make the final decision and give notice thereof to the responsible official and such other persons as circumstances may warrant.

§ 16.26 Considerations in determining whether production or disclosure should be made pursuant to a demand.

(a) In deciding whether to make disclosures pursuant to a demand, Department officials and attorneys should consider:

(1) Whether such disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose, and

(2) Whether disclosure is appropriate under the relevant substantive law concerning privilege.

(b) Among the demands in response to which disclosure will not be made by any Department official are those demands with respect to which any of the following factors exist:

(1) Disclosure would violate a statute, such as the income tax laws, 26 U.S.C. 6103 and 7213, or a rule of procedure, such as the grand jury secrecy rule, F.R.Cr.P., Rule 6(e),

(2) Disclosure would violate a specific regulation;

(3) Disclosure would reveal classified information, unless appropriately declassified by the originating agency,

(4) Disclosure would reveal a confidential source or informant, unless the investigative agency and the source or informant have no objection,

(5) Disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired,

(6) Disclosure would improperly reveal trade secrets without the owner's consent.

(c) In all cases not involving considerations specified in paragraphs (b)(1) through (b)(6) of this section, the Deputy or Associate Attorney General will authorize disclosure unless, in that person's judgment, after considering paragraph (a) of this section, disclosure is unwarranted. The Deputy or Associate Attorney General will not approve disclosure if the circumstances specified in paragraphs (b)(1) through (b)(3) of this section exist. The Deputy or Associate Attorney General will not approve disclosure if any of the conditions in paragraphs (b)(4) through (b)(6) of this section exist, unless the Deputy or Associate Attorney General determines that the administration of justice requires disclosure. In this regard, if disclosure is necessary to pursue a civil or criminal prosecution or affirmative relief, such as an injunction, consideration shall be given to:

(1) The seriousness of the violation or crime involved,

(2) The past history or criminal record of the violator or accused,

(3) The importance of the relief sought,

(4) The importance of the legal issues presented,

(5) Other matters brought to the attention of the Deputy or Associate Attorney General.

(d) Assistant Attorneys General, U.S. Attorneys, the Director of the EOUST, U.S. Trustees, and their designees, are authorized to issue instructions to attorneys and to adopt supervisory practices, consistent with this subpart, in order to help foster consistent application of the foregoing standards and the requirements of this subpart.

§ 16.27 Procedure in the event a department decision concerning a demand is not made prior to the time a response to the demand is required.

If response to a demand is required before the instructions from the appropriate Department official are received, the responsible official or other Department attorney designated for the purpose shall appear and furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate Department official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

§ 16.28 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 16.27 of this chapter pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions rendered in accordance with §§ 16.24 and 16.25 of this part not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall, if so directed by the responsible

The past history or criminal
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**Procedure in the event a depart-
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**Procedure in the event of an ad-
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Department official, respectfully decline to comply with the demand. *See* United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

§ 16.29 Delegation by Assistant Attorneys General.

With respect to any function that this subpart permits the designee of an Assistant Attorney General to perform, the Assistant Attorneys General are authorized to delegate their authority, in any case or matter or any category of cases or matters, to subordinate division officials or U.S. attorneys, as appropriate.

APPENDIX TO SUBPART B—REDELEGATION OF AUTHORITY TO THE DEPUTY ASSISTANT ATTORNEY GENERAL FOR LITIGATION, ANTITRUST DIVISION, TO AUTHORIZE PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

1. By virtue of the authority vested in me by 28 CFR 16.23(b)(1) the authority delegated to me by that section to authorize the production of material and disclosure of information described in 28 CFR 16.21(a) is hereby redelegated to the Deputy Assistant Attorney General for Litigation, Antitrust Division.

2. This directive shall become effective on the date of its publication in the FEDERAL REGISTER.

[Amdt. No. 960-81, 46 FR 52356, Oct. 27, 1981]

Subpart C—Production of FBI Identification Records in Response to Written Requests by Subjects Thereof

SOURCE: Order No. 556-73, 38 FR 32806, Nov. 28, 1973, unless otherwise noted.

§ 16.30 Purpose and scope.

This subpart contains the regulations of the Federal Bureau of Investigation, hereafter referred to as the FBI, concerning procedures to be followed when the subject of an identification record requests production thereof. It also contains the procedures for obtaining any change, correction or updating of such record.

§ 16.31 Definition of identification record.

An FBI identification record, often referred to as a "rap sheet", is a listing of certain information taken from fingerprint cards submitted to and retained by the FBI in connection with arrests and, in some instances, includes information taken from fingerprint cards submitted in connection with Federal employment, naturalization, or military service. The identification record includes the name of the agency or institution which submitted the fingerprint card to the FBI. If the fingerprint card concerns a criminal offense, the identification record includes the date arrested or received, the arrest charge, and the disposition of the arrest if known to the FBI. All arrest data included in an identification record are obtained from fingerprint cards, disposition reports and other reports submitted by agencies having criminal justice responsibilities. Therefore, the FBI Identification Division is not the source of the arrest data reflected on an identification record.

[Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.32 Procedure to obtain an identification record.

The subject of an identification record may obtain a copy thereof by submitting a written request via the U.S. mails directly to the FBI, Identification Division, Washington, DC 20537-9700, or may present his/her written request in person during regular business hours to the FBI Identification Division, Room 11262, J. Edgar Hoover F.B.I. Building, Tenth Street and Pennsylvania Avenue, NW., Washington, DC. Such request must be accompanied by satisfactory proof of identity, which shall consist of name, date and place of birth and a set of rolled-inked fingerprint impressions placed upon fingerprint cards or forms commonly utilized for applicant or law enforcement purposes by law enforcement agencies.

[Order No. 1134-86, 51 FR 16677, May 6, 1986]

125

Mr. Paul A. Krumsiek, Acting Director July 30, 1993
Personnel Staff, Justice Management Division

Edward R. Leary
Administrative Services Division, FBI

AUTHENTICATION OF APPROVING OFFICIAL
IN REMOVAL OF WILLIAM S. SESSIONS
AS DIRECTOR OF THE FEDERAL BUREAU OF
INVESTIGATION (FBI) William S. Sessions

INFORMATION MEMORANDUM

This will confirm your conversation on July 26, 1993, with Special Agent - Section Chief Edward R. Leary, Personnel Management Section, Administrative Services Division, regarding the removal of former Director William S. Sessions from the rolls of the FBI pursuant to the order of the President on July 19, 1993.

Mr. Leary indicated that former Attorney General Edwin Meese, III had personally executed the official "Notification of Personnel Action" (Standard Form 50B) which authorized the employment of William S. Sessions with the Department of Justice (DOJ) as Director of the FBI. As the Director of the FBI reports to the Deputy Attorney General within the DOJ, Mr. Leary requested your guidance concerning the completion of the "Notification of Personnel Action" which recorded the removal of Mr. Sessions as Director of the FBI. After consulting with Mr. John C. Vail, Acting Deputy Assistant Attorney General for Personnel and Administration, you advised Mr. Leary that the FBI Personnel Officer, or an FBI official serving above the Personnel Officer within the FBI chain of command should execute the noted form on behalf of the DOJ.

1 - Mr. Clarke, room 7142
1 - Mr. Kennedy, room 7110
1 - Mr. Davis, room 7427
1 - Mr. Pomerantz, room 6012
1 - Mr. Harley, room 6012
1 - Mr. Leary, room 6050
1 - Mr. Morgison, room 6159
1 - [redacted] room 1885

67-HQ-903563-17

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EEL:[redacted] (11)

Dep. Dir.
ADD Adm.
ADD Inv.
Asst. Dir.:
Adm.Servs.
Crim.Inv.
Ident.
Info.Mgnt.
Insp.
Intell.
Lab.
Legal Coun.
Tech. Servs.
Training
Cong. Affs. Off.
Off. of EEO
Off. Liaison & Int. Affs.
Off. of Public Affs.
Telephone Rm.
Director's Office

APPROVED: Adm Servs. Inspection Off. of EEO Affs.
Crim. Inv. Intell. Off. of Liaison & Int. Affs.
Director Crim. Jus. Info. Laboratory Off. of Public & Cong. Affs.
Dep. Dir. Servs. Legal Coun.
ADD-Adm. Ident. Tech. Servs.
ADD-Inv. Info. Mgmt. Training

MAIL ROOM ☑ mailed directly from PMS, ASD 7/30/93

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
INTERNAL ROUTING/ACTION SLIP

TO	ROOM	NAME	TO	ROOM	NAME
	7176	The Director		6975	[redacted]
	7142	Mr. Clarke		6959	
	7110	Mr. Kennedy		4445	
	7116	Mr. Gow		6992	
	7901	OEEO Affairs		6387	
	7240	OPCA		6941	
	7443	Liaison & Intl Affairs		6712	
	11255	Identification Div.			
	Quantico	Training Div.		5839	
	6012	Admin. Services Div.		5331	
	4026	Intelligence Div.		5869	
	5012	Crim. Inv. Div.		5644	
	3090	Laboratory Div.			
	7159	Technical Serv. Div.		5638	
	7427	Legal Counsel Div.		5869	
	7125	Inspection Div.		5869	
	11861	Crim. Jus. Info. Srv. Div.		4859	
	5829	[redacted]		6247	Comm. Center
	5829			6912	File Review
				5734	Filing Services
	5266	IOM Staff		5447	Forms/Manuals Desk
				18327	Mail Systems
	5634	IAFS Section/Roberts		4790	Name Searching
	6296	[redacted]		1907	Payroll
	6296			5763	Personnel Records
	5368			6248	Reading Room
				1127	Security Unit, ASD
	5342			4330	Information Services
	5350			5991	Special File Room
	5370			1262	Voucher Unit
	6362	Mr. Davidson		4867	[redacted]

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[redacted] — Please file attached in Journal Director Sessions. P/F

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- ☐ Call Me
- ☐ See Me
- ☑ Approp.Action
- ☐ Per Inquiry
- ☐ For Your Info.
- ☐ Note & Return
- ☐ Record & Return
- ☐ See Reverse Side

From	Room	Phone	Date
Information Manage sion	5829	4507	8/2 /93

LAST NAME	FIRST NAME	MIDDLE NAME	DATE OF BIRTH MO.	DAY	YR.	SOC. SEC. NO.			AGENCY	PAYROLL OFFICE	LOCATION	PAYROLL OFFICE NO
1. SESSIONS	WILLIAM	S	05	27	30	491	32	6388	JUSTICE	FBI	WASHINGTON	15-02-0001
2.			DO NOT USE									
3.												
4.												
(RECORD EACH NAME CHANGE- STRIKE OUT PREVIOUS NAME)												

SERVICE HISTORY

EFFECTIVE DATE (1)	ACTION (2)	BASE PAY (3)	DO NOT USE	REMARKS (4)
11-02-87	EXCEPTED APPT -			
	PRESIDENTIAL	89,500.00		EX 02 DIRECTOR
02-01-90	ADMIN PAY INC	96,600.00		EX 02 DIRECTOR
				EO 12698
01-01-91	ADMIN PAY INC	125,100.00		EX 02 DIRECTOR
				EO 12736
01-01-92	ADMIN PAY INC	129,500.00		EX 02 DIRECTOR
				EO 12786
01-01-93	ADMIN PAY INC	133,600.00		EX 02 DIRECTOR
				EO 12826
07-19-93	REMOVAL -	133,600.00		EX 02 DIRECTOR
	BY ORDER OF THE			
	PRESIDENT			

FISCAL RECORD

YEAR (5)	CALENDAR YEAR SALARY DEDUCTIONS (6)	ACCUMULATIVE TOTAL SALARY DEDUCTIONS (7)	REMARKS (8)
			U.S. AIR FORCE
			01/11/51 TO 10/03/5
			JUSTICE DEPARTMENT
			08/01/69 TO 12/23/7
			U.S. COURTS
			12/24/74 TO 11/01/8
1987	1026.76	1026.76 *	0.94% DEDUCTIONS
1988	3537.99	4564.75 *	0.94% DEDUCTIONS
1989	3356.19	7920.94 *	0.94% DEDUCTIONS
1990	3511.25	11432.19 *	0.80% DEDUCTIONS
1991	5446.21	16878.40 *	0.80% DEDUCTIONS
1992	5624.00	22502.40 *	0.80% DEDUCTIONS
1993	1598.40	24100.80 *	0.80% DEDUCTIONS

CB

Deductions and Service Certified Correct

[redacted] b6 b7C

7/30/93

Date

Certifying Officer, Federal Bureau of Investigation

*7.00% RETIREMENT DEDUCTION WITHHELD AFTER MAXIMUM OASDI REACHED.

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APPLICATION FOR IMMEDIATE RETIREMENT
CIVIL SERVICE RETIREMENT SYSTEM

See Privacy Act Information on Instruction Sheet

Section A - Identifying Information

1. Name *(Last, first, middle)*		2. List all other names you have used	
SESSIONS, WILLIAM S.			
3. Address *(Number, street, city, State, ZIP Code)*	4. Telephone number *(incl. area code)*	5. Date of birth *(Month, day, year)*	6. Social Security Number
3920 Argyle Terrace, N.W. Washington, D.C. 20011	(202) 829-6770	5-27-30	491-32-6388
7. Are you a citizen of the United States of America?	[X] Yes [ ] No →	7a. Of what country are you a citizen?	
8. Is this an application for disability retirement?	[ ] Yes → [X] No	*(Ask your employing office about other documents you must submit)*	

Section B - Federal Service

1. Department or agency from which you are retiring *(including Bureau or Division, address and ZIP Code)*	2. Date of final separation *(Month, day, year)*
Department of Justice Federal Bureau of Investigation Washington, D.C. 20535	7-19-93
	3. Title of position from which you are retiring Director

4. Have you performed active honorable service in the Armed Forces or other uniformed services of the United States (see instructions for definitions)?	[X] Yes → *(Complete Schedule A and attach to this form.)* [ ] No	
5. Are you receiving or have you applied for military retired pay, including disability pay and/or pension or compensation from the Department of Veterans Affairs (formerly the Veterans Administration) in lieu of military retired pay? Note: If you later become entitled to military retired pay, you must notify OPM.	[ ] Yes → *(Complete Schedule B and attach to this form.)* [X] No	

Section C - Marital Information

1. Are you married now? *(A marriage exists until ended by death, divorce, or annulment.)*	[X] Yes → *(Also complete items 1a - 1f below)* [ ] No		
1a. Spouse's name *(last, first, middle)*	1b. Spouse's date of birth *(Month, day, year)*	1c. Spouse's Social Security No.	
Sessions, Alice Lewis	6-18-31	489-30-2443	
1d. Place of marriage *(city, state)*	1e. Date of marriage *(Month, day, year)*	1f. Marriage performed by:	[X] Clergyman or Justice of the Peace [ ] Other (explain):
Kansas City, Kansas	10-5-52		
2. Do you have a living former spouse(s) from whom you were divorced on or after May 7, 1985, and to whom a court order gives a survivor annuity?	[ ] Yes *(Attach a certified copy of the court order(s) and any amendments.)* [X] No		

Section D - Annuity Election

Make your election by initialing the box beside the type of annuity you want to receive and give any other information requested. Read the information pages of the instructions and the explanations below and consider your election carefully. No change will be permitted after your annuity is granted except as explained in the instructions. If you are married at retirement, the law provides an annuity with full survivor benefits for your spouse unless your spouse consents to your election not to provide maximum survivor benefits. You must attach SF 2801-2 to this form if you elect less than the maximum survivor annuity for your spouse.

1a. **I CHOOSE A REDUCED ANNUITY WITH MAXIMUM SURVIVOR ANNUITY FOR MY SPOUSE (EQUAL TO 55% OF MY BASIC ANNUITY.)** If you are married at retirement, you will automatically receive this type of annuity unless your spouse consents to your election not to provide maximum survivor benefits.

INITIALS: WSS

-OR-

1b. **I CHOOSE A REDUCED ANNUITY WITH A PARTIAL SURVIVOR ANNUITY FOR MY SPOUSE EQUAL TO 55% OF $ _____ A YEAR.*** If you choose this option, you must attach SF 2801-2 showing your spouse's consent.

INITIALS:

*The amount you select must be less than your yearly annuity.

2. **I CHOOSE AN ANNUITY PAYABLE ONLY DURING MY LIFETIME.** (If you are married and elect this, attach SF 2801-2 showing your spouse's consent.) If you are married at retirement, you cannot choose this type of annuity without your spouse's consent. No survivor annuity will be paid to your spouse after your death if he or she consents to this election.

INITIALS:

3. **I CHOOSE A REDUCED ANNUITY TO PROVIDE A FORMER SPOUSE OR COMBINATION CURRENT/FORMER SPOUSE SURVIVOR ANNUITY.** The attached SF 2801-3 gives my election. If you are married and elect this option, you must also attach SF 2801-2 showing your spouse's consent.

INITIALS:

4. **I CHOOSE A REDUCED ANNUITY WITH SURVIVOR ANNUITY FOR THE PERSON NAMED BELOW WHO HAS AN INSURABLE INTEREST IN ME.** You must be healthy and willing to provide medical evidence if your choose this type of annuity. (Disability annuitants are not eligible to choose this type of annuity.) If you are married and name your spouse, you must attach SF 2801-2 showing your spouse's consent. (See the information page in the instructions.)

INITIALS:

Name of person with insurable interest	Relationship to you	Date of birth	Social Security Number

Section E - Insurance Information

See the information in the instructions (Section E, page 7) about the requirements for continuing Federal Employees Health Benefits and Federal Employees' Group Life Insurance as a retiree.

1. Are you eligible to continue Federal Employees Health Benefits coverage as a retiree?	[X]	Yes
	[ ]	No
2. Are you eligible to continue Federal Employees' Group Life Insurance coverage as a retiree?	[X]	Yes
	[ ]	No

Section F - Other Claim Information

1. Are you receiving, have you ever received, or have you applied for workers' compensation from the Department of Labor because of a job-related illness or injury?	[ ]	Yes *(Complete Schedule C and attach to this form.)*
	[X]	No
2. Have you previously filed any application under the Civil Service Retirement System *(for retirement, refund, deposit or redeposit, or voluntary contributions)*?	[X]	Yes *(Complete items 2a and 2b below.)*
	[ ]	No

2a. Type of application				2b. Claim number(s)
[ ]	Retirement	[X]	Deposit or Redeposit	CSD 920 054
[X]	Refund	[ ]	Voluntary Contributions	

Section G (Optional) - Information About Your Unmarried Dependent Children

1. Dependent child's name *(First, middle, last)*	2. Date of birth *(Mo.,dy.,yr.)*	3. Disabled *(√)*	1. Dependent child's name *(First, middle, last)*	2. Date of birth *(Mo.,dy.,yr.)*	3. Disabled *(√)*

Section H - Applicant's Certification

WARNING
Any intentional false statement in this application or misrepresentation relative thereto is a violation of the law punishable by a fine of not more than $10,000 or imprisonment of not more than 5 years, or both. (18 U.S.C. 1001)

I hereby certify that all statements made in this application are true to the best of my knowledge and belief. I have read and understand all of the information provided in the instructions to this application.

Signature *(Do not print)* Willem S Senlow

Date July 27, 1993

Applicant's Checklist

This checklist is provided to help you be certain you have attached all necessary documentation and to help your employing office be certain it forwards all of your retirement documentation to the Office of Personnel Management. **IMPORTANT: The final processing of your application for retirement may be delayed if you fail to submit any forms or schedules which apply to you.**

		Yes	No
1.	If you answered "yes" to Section B, Item 4, did you attach Schedule A?	[X]	[ ]
2.	If you completed Schedule A, did you attach a copy of your discharge certificate or other certificate of active military service?	[X]	[ ]
3.	If you answered "yes" to Section B, Item 5, did you attach Schedule B?	[ ]	[ ]
4.	If you completed Schedule B and answered "yes" to Item e, did you attach a copy of your request for waiver and a copy of the military finance office's acknowledgment or approval of your request for waiver (if available)?	[ ]	[ ]
5.	If you are married and you elect either less than full survivor benefits (Election 1b) or an annuity payable only to you during your lifetime (Election 2), did you attach SF 2801-2, Spouse's Consent to Survivor Election?	[ ]	[ ]
6.	If you elected a former spouse or combination current/former spouse annuity (Election 3), did you attach SF 2801-3, Election of Former Spouse Survivor Annuity or Combination Current/Former Spouse Annuity? If you are married, did you also attach SF 2801-2, Spouse's Consent to Survivor Election?	[ ]	[ ]
7.	If you are married and you elected an insurable interest survivor annuity (Election 4) for your spouse instead of a maximum or partial survivor annuity, did you attach SF 2801-2, Spouse's Consent to Survivor Election?	[ ]	[ ]
8.	If you answered "yes" to Section E, Item 2, did you attach SF 2818, Continuation of Life Insurance Coverage?	[X]	[ ]
9.	If you answered "yes" to Section F, Item 1, did you attach Schedule C? If applying for disability retirement, did you also attach all medical evidence submitted to OWCP and any decision or evaluation received from OWCP, if available?	[ ]	[ ]

SF 2801 - Schedules A, B and C

1. Name (Last, First, Middle)	2. Date of birth (Month, day, year)	3. Social Security Number
SESSIONS, WILLIAM S.	5-27-30	491-32-6388

Schedule A - Military Service Information

1. If you have performed active honorable service in the Armed Forces, or other uniformed services shown below, complete 1a - 1f below and attach a copy of your discharge certificate or other certificate of active military service (if available).
See instructions for definitions of Armed Services and Uniformed services.

a. Branch or Service	b. Serial Number	c. Dates of Active Duty From (Mo.,dy.,yr.)	c. Dates of Active Duty To (Mo.,dy.,yr.)	d. Last Grade or Rank	e. Organization at Discharge (Div.,Co.,etc.)
U.S. Air Force	AD17321027 A02225391	1-11-51	10-3-55	1st Lt	James Connally AFB

f. If any of your military service occurred on or after January 1, 1957, have you paid a deposit to your agency for this service? (You must pay this deposit to your agency before separation. You cannot pay OPM after you retire.) See Section B of the instructions for the effect on your annuity if the deposit is not paid.
- [ ] Yes
- [ ] No
- [X] Not Applicable

Schedule B - Military Retired Pay

1. If you are receiving or have applied for military retired or retainer pay (including disability retired pay), complete parts 1a - 1e below.

a. Are you receiving or have you ever applied for military retired pay or retainer pay?
- [ ] Yes
- [X] No

b. Have you waived all or part of your military retired or retainer pay in order to receive pension or compensation from the Department of Veterans Affairs?
- [ ] Yes
- N/A
- [ ] No

c. Was your military retired or retainer pay awarded for reserve service under Chapter 67, title 10? *(If "yes", attach a copy of the notice of award, if available.)*
- [ ] Yes
- N/A
- [ ] No

d. Was your military retired or retainer pay awarded for a disability incurred in combat or caused by an instrumentality of war? *(If "yes", attach a copy of the notice of award, if available.)*
- [ ] Yes
- N/A
- [ ] No

e. Are you waiving your military retired or retainer pay in order to receive credit for military service for Civil Service retirement benefits? *(If "yes", attach a copy of your request for waiver and a copy of the military finance officer's acknowledgement or approval of your request for waiver, if available.)*
- [ ] Yes
- N/A
- [ ] No

Schedule C - Federal Employees Compensation Information

1. Are you receiving or have you ever received worker's compensation from the Office of Workers' Compensation Programs (OWCP), Department of Labor, because of a job-related illness or injury?
- [ ] Yes → *(Complete parts 1a - 1c below)*
- [X] No → *(Go to question 2)*

a. Compensation Claim Number	b. Benefits Received From (Mo.,day,yr.)	b. Benefits Received To (Mo.,day,yr.)	c. Type of Benefit
			[ ] Scheduled Award [ ] Total or partial disability compensation
			[ ] Scheduled Award [ ] Total or partial disability compensation

2. If you have applied for workers' compensation (other than as listed in 1a above) but are NOT receiving benefits, check reason and give the information requested.
- [ ] a. Awaiting OWCP decision
- [ ] b. Claim denied

Compensation Claim Number	Compensation Claim Number	Date Claim Denied

3. Except for periods of scheduled compensation awards, workers' compensation and Civil Service retirement benefits **cannot** be paid for the same period of time. Please review and complete the information below regarding your claim. **This section must be completed.**

a. Do you agree to notify OPM promptly if the status of your workers' compensation claim changes?
- [ ] Yes
- [ ] No

b. By my signature below, I certify that I understand that I may not legally receive both retirement annuity and Compensation (except for a scheduled award) for the same period of time and that any overpayment of Compensation or annuity is subject to collection by OPM or OWCP.

Applicant's Certification

I certify that all statements made on these schedules are true to the best of my knowledge and belief.	Signature (Do not print)	Date
	William S Sessions	July 27, 1993

CSRS

CERTIFIED SUMMARY OF FEDERAL SERVICE
CIVIL SERVICE RETIREMENT SYSTEM

U.S. Office of Personnel Management

Information for Agency

1. A certified copy of this form must accompany the employee's Application for Immediate Retirement (SF 2801) or an Application for Death Benefits (SF 2800) for a deceased employee if a survivor annuity appears to be payable.
2. This form may also be used:
   - for retirement counseling purposes
   - to respond to an employee's request for a record of creditable service.
3. See FPM Supplement 830-1 for detailed instructions for completion and disposition of this form.

Instructions for the Employee

1. Your employing office will complete and certify this form for you.
2. Review this form carefully. Be sure it contains all of your service.
3. Complete Section E, Employee's Certification, and return it to your employing office.

Section A - Identification

1. Name of employee (Last, first, middle initial)	2. Date of birth (Month, day, year)	3. Social Security Number
SESSIONS, WILLIAM S.	5-27-30	491-32-6388
4. List all other names used (Maiden name, AKA, spelling variants)	5. Other birth dates used	6. Military Serial Number: AD17321027
		7. Service computation date for retirement purposes: 11-8-64 A02225391

8a. Does the applicant receive military retired pay?	8b. If YES, has the applicant waived military retired pay to credit military service for civil service retirement?
☐ YES Attach a copy of the applicant's military retired pay order, if available and complete 8b.	☐ YES Attach a copy of the military finance center's letter to the employee accepting waiver, if available
☒ NO	☐ NO *(Includes cases where a waiver is unnecessary)*

Section B - Verified Service History Documented in Official Records

Federal Agency or Military Service Branch	Appointment, Separation, or Conversion Dates for Civilian and Active Honorable Military Service		Name of Retirement System* (e.g., CSRS, CSRS Offset, etc.)	Remarks and Non-Creditable Time (Indicate if service is Part-Time)
	From	To		
U.S. Air Force (Active Duty)	1-11-51	10-3-55	Mil	Honorable 4-8-23 (DD-214s attchd)
Dept. of Justice	8-1-69	12-23-74	CSRS	(Refunded) 5-4-23
U.S. Courts	12-24-74	11-1-87	CSRS	(Deposit made) 12-10-8
FBI	11-2-87	7-19-93	CSRS Offset	Retirement 5-8-18 (Involuntary Separation)
				Total Creditable Service 28-8-12
				(No sick leave credit)

* Give details of creditable civilian service not subject to retirement deductions in Section C.

Section C - Details of Civilian Service Not Subject to Contributory Retirement System for Civilian Federal Employees

This information is required to compute the portion of annuity based on such service.

Detail below (1) any period of Federal civilian service subject to "FICA" deductions, and (2) any other Federal civilian service not subject to a Federal employee (or D.C. Government) retirement system. If total basic salary earned for any such period of service is known, a summary entry may be entered on the right hand side below. Otherwise, show each change affecting basic salary during the period of service. Show part-time tour of duty if applicable. If part-time service is after April 6, 1986, also provide total number of hours employee worked during that period and show what a full-time tour of duty would be.

Nature of Action Appt., pro., res., etc.)	Effective Date (Month, day, year)	Basic Salary Rate	Salary Basis (per annum, per hour, WAE, etc.)	Leave Without Pay	If Basic Salary Actually Earned Is Available Make Summary Entry Below		
					From (Month, day, year)	To (Month, day, year)	Total Earned

Section D - Agency Certification

I certify that the information on this form accurately reflects certified information contained on the official personnel and/or payroll records in the custody of this agency and that if retiring, the retiring employee has sufficient service to support title to an immediate annuity.

Signature of Authorized Agency Personnel Official	Agency Name and Address, including ZIP Code, and Telephone Number, including Area Code
	Federal Bureau of Investigation 10th St. and Pennsylvania Avenue, N.W. Washington, D.C. 20535 (202) 324-2945
Official Title: Supervisory Special Agent	Date: 7-20-93

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Section E - Employee's Certification

☑ **The above service is complete.**

☐ **I have additional service.** *(If you claim additional service, attach signed statement(s) giving dates, positions, titles and locations of employment, including agency, bureau, and division. Claimed service cannot be credited for retirement until it has been verified, including unverified service listed on a SF 144, Statement of Prior Federal Civilian and Military Service, or similar affidavit.)*

Note: If you have performed Federal civilian service subject to social security deductions (FICA) or not subject to retirement deductions, be sure that your agency has correctly completed Section C above.

If you have active military service on or after January 1, 1957, for which you have not made a deposit, be sure to read Section B of the "Instructions for Completing Application for Immediate Retirement" for information on how this decision affects your annuity. You CANNOT change your decision after you retire.

Signature	Date
Allen D Sessions	July 26, 1993

CHARACTER OF SEPARATION: HONORABLE

REPORT OF SEPARATION FROM THE ARMED FORCES OF THE UNITED STATES

DEPARTMENT: AIR FORCE

SEPARATION DATA

1. LAST NAME—FIRST NAME—MIDDLE NAME: SESSIONS William Steele
2. SERVICE NUMBER: AD 17 321 027
3. GRADE—RATE—RANK AND DATE OF APPOINTMENT: A/C (T) 9 Apr 52
4. COMPONENT AND BRANCH OF CLASS: Reg AF
5. QUALIFICATIONS — SPECIALTY NUMBER OR SYMBOL: 99011 — RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER: None
6. EFFECTIVE DATE OF SEPARATION: DAY 3 MONTH October YEAR 1952
7. TYPE OF SEPARATION: Discharge
8. REASON AND AUTHORITY FOR SEPARATION: Conv of Govt to accept apnt as com off. Par3 AFR39-14 2 May 51.
9. PLACE OF SEPARATION: James Connally Air Force Base, Waco, Texas
10. DATE OF BIRTH: DAY 27 MONTH May YEAR 30
11. PLACE OF BIRTH (City and State): Fort Smith, Arkansas
12. DESCRIPTION: Male Caucasian RACE, Brown COLOR HAIR, Green COLOR EYES, 73" HEIGHT, 151 WEIGHT

SELECTIVE SERVICE DATA

13. REGISTERED: YES X NO — SELECTIVE SERVICE NUMBER: 23 49 30 272
14. SELECTIVE SERVICE LOCAL BOARD NUMBER (City, County, State): #49, Kansas City, Jackson, Missouri
15. INDUCTED: DAY MONTH N/A YEAR
16. ENLISTED IN OR TRANSFERRED TO A RESERVE COMPONENT: YES NO — COMPONENT AND BRANCH OR CLASS: N/A — COGNIZANT DISTRICT OR AREA COMMAND: N/A

SERVICE DATA

17. MEANS OF ENTRY OTHER THAN AT INDUCTION: ☒ ENLISTED 4 Years ☐ REENLISTED ☐ COMMISSIONED ☐ CALLED FROM INACTIVE DUTY
18. GRADE—RATE OR RANK AT TIME OF ENTRY INTO ACTIVE SERVICE: Basic Airman
19. DATE AND PLACE OF ENTRY INTO ACTIVE SERVICE: DAY 11 MONTH Jan YEAR 51 PLACE (City and State): Kansas City, Missouri
20. HOME ADDRESS AT TIME OF ENTRY INTO ACTIVE SERVICE (St., R.F.D., County, City and State): 2838 E.6th St., Jackson, Kansas City, Missouri

STATEMENT OF SERVICE FOR PAY PURPOSES	A. YEARS	B. MONTHS	C. DAYS
21. NET (N/A) SERVICE COMPLETED FOR PAY PURPOSES EXCLUDING THIS PERIOD			
22. NET SERVICE COMPLETED FOR PAY PURPOSES THIS PERIOD	1	8	23
23. OTHER SERVICE (Act of 16 June 1948 as amended) COMPLETED FOR PAY PURPOSES	0	0	0
24. TOTAL NET SERVICE COMPLETED FOR PAY PURPOSES	1	8	23

25. ENLISTMENT ALLOWANCE PAID ON EXTENSION OF ENLISTMENT, IF ANY: DAY — MONTH N/A — YEAR — AMOUNT None
26. FOREIGN AND/OR SEA SERVICE: YEARS 0 MONTHS 0 DAYS 0
27. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED: None
28. MOST SIGNIFICANT DUTY ASSIGNMENT: 3565th Student Squadron, 3565th Observer Training Group
29. WOUNDS RECEIVED AS A RESULT OF ACTION WITH ENEMY FORCES (Place and date, if known): None

30. SERVICE SCHOOLS OR COLLEGES, COLLEGE TRAINING COURSES AND SHORT-HEAD. COURSES SUCCESSFULLY COMPLETED	DATES (From-To)	MAJOR COURSE	31. SERVICE TRAINING COURSES SUCCESSFULLY COMPLETED
AFFS	9 April 1952 To 3 October 1952	Radar Ober A/W Ftr(1561-C-E1)	None

INSURANCE AND PAY DATA

GOVERNMENT INSURANCE INFORMATION: IF PREMIUM IS NOT PAID WHEN DUE OR WITHIN THIRTY-ONE DAYS THEREAFTER, INSURANCE WILL LAPSE. MAKE CHECKS OR MONEY ORDERS PAYABLE TO THE TREASURER OF THE UNITED STATES. FORWARD PAYMENTS FOR N.S.L.I. TO THE COLLECTION'S UNIT, VA BRANCH OFFICE HAVING JURISDICTION OF AREA IN WHICH YOU MAINTAIN PERMANENT RESIDENCE. FORWARD PAYMENTS FOR U.S.G.L.I. TO COLLECTIONS DIVISION, VETERANS ADMINISTRATION, WASHINGTON 25, D.C. WHEN MAKING INSURANCE PAYMENTS BE SURE TO GIVE FULL NAME AND PERMANENT ADDRESS FOR MAILING PURPOSES, SERVICE SERIAL NUMBER AND POLICY NUMBER(S) IF KNOWN.

32. KIND OF INSURANCE (Indicate unit premium (one month)): N.S.L.I. $10,000 (SGLI) — U.S.G.L.I. N/A
33. MONTH ALLOTMENT DISCONTINUED: N/A
34. MONTH NEXT PREMIUM DUE: N/A
35. TOTAL PAYMENT UPON SEPARATION: $106.32
36. TRAVEL OR MILEAGE ALLOWANCE INCLUDED IN TOTAL PAYMENT: NONE
37. DISBURSING OFFICER'S NAME AND SYMBOL NUMBER: ROBERT C. HARRIS, Captain, USAF, 225-501

AUTHENTICATION

38. REMARKS (Continue on reverse): No time lost under Sec 6, UCMJ Act 5 May 50. Blood Group "O" Grade held prior to A/C - A/EC - Temp.
39. SIGNATURE OF OFFICER AUTHORIZED TO SIGN: Francis J. Seymour Jr.
NAME, GRADE AND TITLE (Typed): FRANCIS J. SEYMOUR, JR. 2nd Lt., USAF Asst Adjutant

PERSONAL DATA

40. V.A. BENEFITS PREVIOUSLY APPLIED FOR (Specify type) — COMPENSATION, PENSION, INSURANCE BENEFITS, ETC.: N/A — CLAIM NUMBER: N/A
41. DATES OF LAST CIVILIAN EMPLOYMENT: FROM Sep 48 TO Jan 51
42. MAIN CIVILIAN OCCUPATION: Student
43. NAME AND ADDRESS OF LAST CIVILIAN EMPLOYER: University of Kansas
44. UNITED STATES CITIZEN: ☒ YES ☐ NO
45. MARITAL STATUS: Single
46. NON-SERVICE EDUCATION (Years successfully completed): GRAMMAR SCHOOL 8 — HIGH SCHOOL 4 — COLLEGE 3 — DEGREE(S): None — MAJOR COURSE OF FIELD: Pre-Medical
47. PERMANENT ADDRESS FOR MAILING PURPOSES AFTER SEPARATION (St., R.F.D., County, City and State): 2838 E. 6th St., Jackson, Kansas City 24 Missouri
48. SIGNATURE OF PERSON BEING SEPARATED: William S Sessions

ALL ENTRIES APPLY TO CURRENT PERIOD OF SERVICE (unless otherwise indicated)

DD FORM 1 JAN 50 214

HEADQUARTERS COPY (ARMY & AIR FORCE): ATTACH TO SERVICE RECORD.
NAVY: TO BUREAU OF NAVAL PERSONNEL, WASHINGTON, D.C.
MARINE CORPS: AFFIXED TO SERVICE RECORD BOOK.
COAST GUARD: TO HQ, COAST GUARD, WASHINGTON, D.C.

HONORABLE — ARMED FORCES OF THE UNITED STATES — AIR FORCE

SEPARATION DATA

1. LAST NAME — FIRST NAME — MIDDLE NAME	2. SERVICE NUMBER	3. GRADE — RATE — RANK AND DATE OF APPOINTMENT	4. COMPONENT AND BRANCH OR CLASS
SESSIONS, WILLIAM STEELE	A02 225 391	1st Lt(T)10Apr54	USAF

5. QUALIFICATIONS: SPECIALTY NUMBER or SYMBOL	RELATED CIVILIAN OCCUPATION AND D. O. T. NUMBER	6. EFFECTIVE DATE OF SEPARATION: DAY	MONTH	YEAR	7. TYPE OF SEPARATION
1564	None	3	Oct	55	Release from Active Duty

8. REASON AND AUTHORITY FOR SEPARATION: Compl of Rqr period of Service; Sec I, Par 33, AFR 36-22

9. PLACE OF SEPARATION: James Connally Air Force Base, Waco, Texas

10. DATE OF BIRTH: DAY	MONTH	YEAR	11. PLACE OF BIRTH (City and State)	12. DESCRIPTION: SEX	RACE	COLOR HAIR	COLOR EYES	HEIGHT	WEIGHT
27	May	30	Ft Smith, Arkansas	Male	Cau	Brown	Green	6' 1"	151

SELECTIVE SERVICE DATA

13. REGISTERED: YES	NO	SELECTIVE SERVICE NUMBER	14. SELECTIVE SERVICE LOCAL BOARD NUMBER (City, County, State)	15. INDUCTED: DAY	MONTH	YEAR
NA	NA	NA	NA	NA	NA	NA

16. ENLISTED IN OR TRANSFERRED TO A RESERVE COMPONENT

YES	NO	COMPONENT AND BRANCH OR CLASS	COGNIZANT DISTRICT OR AREA COMMAND
NA	NA	NA	NA

SERVICE DATA

17. MEANS OF ENTRY OTHER THAN BY INDUCTION: ☐ ENLISTED ☐ REENLISTED ☒ COMMISSIONED ☐ CALLED FROM INACTIVE DUTY

18. GRADE — RATE OR RANK AT TIME OF ENTRY INTO ACTIVE SERVICE: Second Lieutenant

19. DATE AND PLACE OF ENTRY INTO ACTIVE SERVICE: DAY	MONTH	YEAR	PLACE (City and State)	20. Home Address At Time Of Entry Into Active Service (St., R. F. D., City, County and State)
4	Oct	52	James Connally AFB, Texas	2838 6th St, Kansas City(Jackson) 1, Missouri

STATEMENT OF SERVICE FOR PAY PURPOSES	A. YEARS	B. MONTHS	C. DAYS
21. NET ( ) Service Completed For Pay Purposes Excluding This Period	NA	NA	NA
22. NET SERVICE COMPLETED FOR PAY PURPOSES THIS PERIOD	3	0	0
23. OTHER SERVICE (Act of 16 June 1948 as amended) COMPLETED FOR PAY PURPOSES	1	8	23
24. TOTAL NET SERVICE COMPLETED FOR PAY PURPOSES	4	8	23

25. ENLISTMENT ALLOWANCE PAID ON EXTENSION OF ENLISTMENT, IF ANY: DAY NA | MONTH NA | YEAR NA | AMOUNT NA

26. FOREIGN AND/OR SEA SERVICE: YEARS 0 | MONTHS 0 | DAYS 0

27. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED: Natl Def Svc Med

28. MOST SIGNIFICANT DUTY ASSIGNMENT: Radar Instructor

29. WOUNDS RECEIVED AS A RESULT OF ACTION WITH ENEMY FORCES (Place and date, if known): None

30. SERVICE SCHOOLS OR COLLEGES, COLLEGE TRAINING COURSES AND/OR POST-GRAD. COURSES SUCCESSFULLY COMPLETED.	DATES (From-To)	MAJOR COURSES	31. SERVICE TRAINING COURSES SUCCESSFULLY COMPLETED
AFFS	9Apr52-30ct52	A/W Ftr	
Instr Tng Crse	270ct52-6Dec52	Acad Instruction	

INSURANCE AND PAY DATA

GOVERNMENT INSURANCE INFORMATION: (A) Permanent plan premium must continue to be paid when due, or within 31 days thereafter, or insurance will lapse. (B) Term insurance not under waiver same as (A) above; (C) Term insurance under waiver — premium payment must be resumed within 120 days after separation. Forward premiums on NSLI to Veterans Administration District Office having jurisdiction over the area shown in Item 47. Forward premiums on USGLI to Veterans Administration, Washington 25, D. C. (See VA Pamphlet 9-3). When paying premiums give full name, address, Service Number, Policy Number(s), Branch of Service, date of separation. Contact nearest VA office for information concerning Government Life Insurance.

32A. Kind & Amt. of Insurance & Mthly. Premium	32B. ACTIVE SERVICE PRIOR TO 25 APRIL 1951: YES	NO	UNKNOWN	33. MONTH ALLOTMENT DISCONTINUED	34. MONTH NEXT PREMIUM DUE
NSLI - $10,000 - $6.50	X			Jul 53 (W-PI 23)	See Note Above

35. TOTAL PAYMENT UPON SEPARATION	36. TRAVEL OR MILEAGE ALLOWANCE INCLUDED IN TOTAL PAYMENT	37. DISBURSING OFFICER'S NAME AND SYMBOL NUMBER
NA	NA	NA

AUTHENTICATION

38. REMARKS (Continue on reverse)

(1) Certificate of Sv (DD Fm 217AF) issued 2nd Lt ResAF (AFRes) (P) Aptd 4 Oct 52

39. SIGNATURE OF OFFICER AUTHORIZED TO SIGN: John F Freund

NAME, GRADE AND TITLE (Typed): JOHN F FREUND, CAPT, USAF OIC, Off Br, Mg Pers

PERSONAL DATA

40. V. A. BENEFITS PREVIOUSLY APPLIED FOR (Specify type) COMPENSATION, PENSION, INSURANCE BENEFITS, ETC.: None — CLAIM NUMBER: None

41. DATES OF LAST CIVILIAN EMPLOYMENT: FROM	TO	42. MAIN CIVILIAN OCCUPATION	43. NAME AND ADDRESS OF LAST CIVILIAN EMPLOYER
None	None	None	None

44. UNITED STATES CITIZEN: YES	NO	45. MARITAL STATUS	46. NON-SERVICE EDUCATION (Years successfully completed): GRAMMAR	HIGH SCHOOL	COLLEGE	DEGREE(S)	MAJOR COURSE OR FIELD
X		M	4	3	None	None	

47. PERMANENT ADDRESS FOR MAILING PURPOSES AFTER SEPARATION (St., R. F. D., City, County and State): 3124 Mead Street, Waco (McLennan) Texas

48. SIGNATURE OF PERSON BEING SEPARATED: William S. Sessions

FORM DD 1 JAN 53 214 — EDITION OF 1 JAN 49 IS OBSOLETE

HEADQUARTERS COPY (ARMY & AIR FORCE: ATTACH TO SERVICE RECORD. NAVY: TO BUREAU OF NAVAL PERSONNEL, WASHINGTON, D. C. MARINE CORPS: TO CMC, WASHINGTON, D. C. COAST GUARD: TO HQ, COAST GUARD, WASHINGTON, D. C.)

TR TO INACTIVE DU FWD TO CMC (CODE DCH).

ALL ENTRIES APPLY TO CURRENT PERIOD OF SERVICE (unless otherwise indicated)

** TOTAL PAGE.03 **

FEB 20 1975

UNITED STATES OF AMERICA

GENERAL SERVICES ADMINISTRATION

National Personnel Records Center
(Military Personnel Records)
9700 Page Boulevard
St. Louis, Missouri 63132

DATE: Feb. 14, 1975

REPLY TO ATTN OF: NCRM FC

SUBJECT: Service Information on SESSIONS, WILLIAM S. 491 32 6388

M. PATRICIA CARROLL
CHIEF, OPERATIONS BRANCH
ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
SUPREME COURT BUILDING
WASHINGTON, D.C. 20544

Ref your ltr of 1-30-75

☐ An official statement of service prepared from records on file in this Center is shown on the reverse side.

☑ Subject person served in the U.S. AIR FORCE

from JAN 11, 1951 to PRESENT (RETIRED RESERVE)

☑ Type and character of separation: HONORABLE RELEASE FROM ACTIVE DUTY.

☑ Active service: JAN 11, 1951 to OCT 3, 1955 _____ to _____.

☐ _____ was honorably retired _____ by reason of permanent physical disability incurred in line of duty, but not as a result of armed conflict or an instrumentality of war. The percentage of disability is _____.

☑ This type of reply is normally furnished in response to request of this nature. If additional information is required, furnish full particulars and we will give prompt consideration.

☐ Report of separation physical is attached.

☐ The medical records you requested:

- ☐ Are enclosed
- ☐ Are not in file.
- ☐ Have been lent to the Veterans' Administration and
- ☐ Will be forwarded under separate cover.
- ☐ May be obtained from the VA office shown below. *(Please refer to VA Claim No. C-_____.)*

☐

for D. L. BACON
Chief, Air Force Reference Branch

67-NOT RECORDED
12 JUL 25 1988

Keep Freedom in Your Future With U.S. Savings Bonds

GSA FORM DEC 69 6851

A.O. Form No. 250
(February 1974)

UNITED STATES COURTS

NOTIFICATION OF PERSONNEL ACTION

DATE (Mo., Day, Year): 1-15-75

4821

1. NAME (CAPS) LAST-FIRST-MIDDLE	Hon., Mr., Miss, Mrs., Ms.	2. 1-MALE 2-FEMALE	3. BIRTH DATE (Mo., Day, Year)	4. SOCIAL SECURITY NO.
SESSIONS, WILLIAM S.	Hon.	1	05-27-30	491-32-6388

5. EMPLOYMENT NOT TO EXCEED	(a) DATE (Mo., Day, Year)	(b) HOURS per P.P. (Schedule in REMARKS)	6. SERVICE COMP. DATE	7. LAST EQUIV. INC.	8. WGI DUE DATE

9. FEGLI [Temporary Code]	10. RETIREMENT	11. H.B. CODE
1 — 1[5]-COVERED (Regular only-Declined Optional) 2 - INELIGIBLE 3[6]-WAIVED 4[7]-COVERED (Regular & Opt.)	1-CS 2-FICA 4-NONE 5-JSAS 6-JSAS & CS	102

12. CODE-NATURE OF ACTION		13. EFFECTIVE DATE (Mo., Day, Year)
170	Excepted Appointment	12-24-74

14. AUTHORITY

FROM

15. POSITION TITLE	NUMBER	
16. PAY PLAN	17. (a) GRADE (b) STEP	18. SALARY
18(a) ADDITIONAL COMPENSATION	18(b) ANNUITY	
19. EMPLOYING OFFICE	CODE	
CIRCUIT DISTRICT OTHER		
20. OFFICIAL DUTY STATION AND MAILING ADDRESS		

TO

21. POSITION TITLE	NUMBER	
United States District Judge		
22. PAY PLAN	23. (a) GRADE (b) STEP	24. SALARY
		pa $40,000
24(a) ADDITIONAL COMPENSATION	24(b) ANNUITY	
25. EMPLOYING OFFICE	CODE	
CIRCUIT DISTRICT OTHER	Texas, Western	
26. OFFICIAL DUTY STATION AND MAILING ADDRESS		
El Paso, Texas 79901		

27. APPROPRIATION CODE	28. POSITION OCCUPIED 1-COMPETITIVE SERVICE 2-EXCEPTED SERVICE	29. OCCUPANT OF POSITION - [NEW or VICE-(State Previous Occupant)]
0200	2	Ernest Guinn, deceased

30. REMARKS SEPARATIONS: SHOW REASONS BELOW AS REQUIRED.

Notice sent to: Honorable William S. Sessions
Clerk, U. S. District Court
West Publishing Co. (1661)
Hartindale-Hubbell, Inc. (881)
Lawyers Co-op. Pub. Co. (326)

CC# 13049211

31. JUDGES ONLY:	(a) DATE OF NOMINATION	(b) DATE OF CONFIRMATION	(c) DATE OF COMMISSION	(d) ELIGIBLE TO RETIRE
	12-11-74	12-10-74	12-20-74	05-27-95

32. OFFICE MAINTAINING PERSONNEL FOLDER	34. SIGNATURE (Or other authentication) AND TITLE
Administrative Office of the U.S. Courts	
33. CODE / EMPLOYING DEPARTMENT OR AGENCY	
JLØ1 / JUDICIAL BRANCH	Director

(FOR AGENCY USE)

OFFICIAL PERSONNEL FOLDER COPY

ADMINISTRATIVE OFFICE OF
UNITED STATES COURTS

A.O. Form No. 250
(February 1974)

DATE (Mo., Day, Year) 01-29-75

NOTIFICATION OF PERSONNEL ACTION

4821E

1. NAME (CAPS) LAST-FIRST-MIDDLE	Hon., Mr., Miss, Mrs., Ms.	2. 1-MALE 2-FEMALE	3. BIRTH DATE (Mo., Day, Year)	4. SOCIAL SECURITY NO.
SESSIONS, WILLIAM S.	Hon.			491-32-6388

5. EMPLOYMENT NOT TO EXCEED	(a) DATE (Mo., Day, Year)	(b) HOURS per P.P. (Schedule in REMARKS)	6. SERVICE COMP. DATE	7. LAST EQUIV. INC.	8. WGI DUE DATE

9. FEGLI [Temporary Code] 1[5]-COVERED (Regular only-Declined Optional) 2-INELIGIBLE 3[6]-WAIVED 4[7]-COVERED (Regular & Opt.)	10. RETIREMENT 5 (1-CS 2-FICA 4-NONE 5-JSAS 6-JSAS & CS)	11. H.B. CODE
	5	

12. CODE-NATURE OF ACTION	13. EFFECTIVE DATE (Mo., Day, Year)
980 - Election of JSAS	12-24-74*

14. AUTHORITY
AO Form 162 received 01-23-75

FROM	TO
15. POSITION TITLE / NUMBER	21. POSITION TITLE / NUMBER: United States District Judge
16. PAY PLAN / 17. (a) GRADE (b) STEP / 18. SALARY	22. PAY PLAN / 23. (a) GRADE (b) STEP / 24. SALARY: Pa $40,000
18(a) ADDITIONAL COMPENSATION / 18(b) ANNUITY	24(a) ADDITIONAL COMPENSATION / 24(b) ANNUITY
19. EMPLOYING OFFICE / CODE: CIRCUIT, DISTRICT, OTHER	25. EMPLOYING OFFICE / CODE: CIRCUIT, DISTRICT, OTHER Texas, Western
20. OFFICIAL DUTY STATION AND MAILING ADDRESS	26. OFFICIAL DUTY STATION AND MAILING ADDRESS: El Paso, Texas 79901

27. APPROPRIATION CODE	28. POSITION OCCUPIED (1-COMPETITIVE SERVICE, 2-EXCEPTED SERVICE)	29. OCCUPANT OF POSITION (NEW or VICE-(State Previous Occupant))
0200	2	

30. REMARKS SEPARATIONS: SHOW REASONS BELOW AS REQUIRED.

*Retroactive Salary Deductions.

Notice sent to: Honorable William S. Sessions
Clerk, U. S. District Court

VC

31. JUDGES ONLY:	(a) DATE OF NOMINATION	(b) DATE OF CONFIRMATION	(c) DATE OF COMMISSION	(d) ELIGIBLE TO RETIRE

32. OFFICE MAINTAINING PERSONNEL FOLDER	34. SIGNATURE (Or other authentication) AND TITLE
Administrative Office of the U.S. Courts	
33. CODE / EMPLOYING DEPARTMENT OR AGENCY	
JLØ1 / JUDICIAL BRANCH	William T. Barnes, Chief, Division of Personnel

(FOR AGENCY USE)

OFFICIAL PERSONNEL FOLDER COPY

Federal Employees Health Benefits Program

Notice of Change in Health Benefits Enrollment

Part A - Identifying Information

1. Name (Last, first, middle initial)	2. Date of birth	3. Social Security Number
Sessions, William S.	4-27-30	491-32-6388
4. Address (including ZIP Code)	**5. Payroll Office Number**	**6. Enrollment Code Number**
3920 Argyle Terrace, Northwest Washington, D. C. 20011	15-02-0001	442
	7. SF 2811 Report No	8. Date this action becomes effective
		7/19/93

Only the item that is checked below affects your enrollment. Read that item carefully and follow any pertinent instructions. Keep this form for your records.

Part B - Termination

☐ Your enrollment terminates on the date in Part A, item 8, above. However, your coverage is temporarily extended for 31 days after that date.

Important Notice: **You have the right to convert to an individual (nongroup) contract with the carrier of your plan. You also may have the right to temporarily continue your group coverage.** See Part B - Termination on the back of this form for information about 31-day extension of coverage, conversion, and temporary continuation of coverage.

Part C - Transfer Out

XX This enrollment continues but is transferred to the new Payroll Office (or Retirement System) shown below. See Part C on the back of this form for more information.

Civil Service Retirement System
Office of Personnel Management
Washington, D.C. 20415

Part D - Transfer In

☐ The new Payroll Office (or Retirement System) shown in Part I below has accepted transfer of this enrollment and will continue it.

Part E - Reinstatement

☐ Your enrollment has been reinstated effective on the date in Part A, item 8, above.

Part F - Change in Name of Enrollee

☐ The name under which this enrollment is carried has been changed to:

Name | Date of birth

Address (including ZIP Code) if different from Part A, item 4, above.

Part G - Change in Enrollment - Survivor Annuitant

☐ Your enrollment has been changed from family coverage to self only. Your plan will send you a new identification card. Your new enrollment code number is shown below.
(Note: This item is completed by Retirement Systems only.)

New Enrollment Code Number →

Part H - Remarks

Employee Annuitant

Part I - Date of Notice

(Note: Instructions for Employing Offices are on the back of Copy 4 of this form.)

Name and address of agency (including ZIP Code)

Federal Bureau of Investigation
10th & Pennsylvania Ave., N.W.
Washington, D.C. 20535

Signature of authorized agency official	Date
John L. McGrath, Jr.	7/28/93

SF 2809

FOR USE BY EMPLOYEES ONLY

(Read Instructions on Back of Copy 5)

Use typewriter or print with ball point pen, bearing down to make legible copies

PART A — All who register must fill in this part

Sessions, William S.

5 27 30 X Yes No

Randolph Towers, Suite #10 4001 N. 9th St.

Arlington, Virginia 22203 491-32-6388 X Male Female

IMPORTANT - It is illegal for an employee or a family member to be covered under more than one FEHB enrollment at any one time. Any enrollment acquired through the family enrollment of another Federal or District of Columbia employee or annuitant must be cancelled or changed to Self Only. Similarly, if a family member listed by you in Part B is covered through his or her own enrollment, you cannot elect a family enrollment unless the family member cancels his or her enrollment.

PART B — Fill in this part if you wish to enroll or change your enrollment in a Health Benefits Plan.

If enrollment is for Self Only, answer items 1 and 3. If enrollment is for Self and Family, answer items 1, 2, and 3. Show additional family members (item 2) and/or health insurance coverages (item 3) on a separate sheet and attach.

If you are changing your enrollment, also fill in PART C.

Name of Plan: SAMBA — Enrollment Code: 442

Include as eligible family members your spouse and your unmarried dependent children under age 22 (including your legally adopted children and children who are placed with you for legal adoption). Also include an unmarried dependent child age 22 or older who is incapable of self-support because of a mental or physical disability that existed before age 22 and who is financially dependent on you. Attach a doctor's certificate if a child age 22 or older is listed. DO NOT LIST PARENTS OR OTHERS WHO ARE NOT ELIGIBLE FAMILY MEMBERS. THEY WILL NOT RECEIVE BENEFITS EVEN IF THEY ARE DEPENDENT ON YOU AND ARE LISTED.

Names of Family Members	Birthdate (Month, Day, Year)	Is this person already enrolled in the Federal Employees Health Benefits Program (FEHB Program)? If Yes, give name of plan and enrollment code.
a. Spouse: Alice Lewis	6/18/31	☐ Yes → Complete 3a-3f below. ☐ No

3. If this person is to be enrolled for self and family, complete the following:

a. Name of Insurance Company (CHAMPUS, Medicare, non-Federal Plan, etc.) — b. Name of Policyholder

c. Policyholder's Social Security No. — d. Type of Coverage: ☐ Self Only ☐ Self & Family

e. Name of Employer — f. Certificate or Policy Number

b6 b7C

PART C — Fill in this part, as well as PART B, to change your registration.

Answer items 1, 2, 3 and 4 to show Plan and Enrollment Code being changed and eligibility for change.

1. Present Plan Name	2. Present Plan Enrollment Code	3. Number of Event That Permits Change (See Table on Back of Copy 1)	4. Date of Event That Permits Change (Month, Day, Year)
Service Benefit	105	1	11 9 87

PART D — Fill in this part if you wish NOT to enroll or if you wish to cancel your enrollment.

Place an X in the box at item 1 or 2 whichever applies.

1. ☐ I do not wish to enroll under the Federal Employees Health Benefits Program.

2. ☐ I wish to cancel my enrollment in the Federal Employees Health Benefits Program.

Present Enrollment Code:

My signature in Part E, item 1, certifies that I have read "Cancellation of Enrollment" on back of copy 5.

PART E — All who register must fill in this

1. Signature: 11/9/87

WARNING—Any intentional false statement in this application or willful misrepresentation relative thereto is a violation of the law punishable by a fine of not more than $10,000 or imprisonment of not more than 5 years, or both. (18 U.S.C. 1001.)

PART F — To be completed by agency.

1. Name and Address (Including Zip Code) of Employing Office

BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

2. Date Received in Employing Office: 11-9-87

3. Effective Date of Enrollment: 1-1-88 jfk

4. Effective Date of Termination of Enrollment Shown in Part C: 12-31-87

5. SF 2811 Report No.: (442) (105) 88-23, 88-7

6. Agency Use: 15-02-0001

7. Agency Locator Code (if different from item 5):

b6 b7C

REMARKS

Entitled to Compensation 12-30-87

Copy 1—Official Personnel Folder

FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

(Read Instructions on Back of Page 4)

To employing office: Show Old Carrier's Control Number only if election is to cancel enrollment or to change options or type of enrollment in the same plan. →

New Carrier's Control No. 27352049

Old Carrier's Control No. 13044211

PART A
All who register must fill in this part.

1. Name (Last)	(First)	(Middle Initial)	2. Date of Birth (Use numbers)			3. Are You Now Married
SESSIONS	WILLIAM	STEELE	Month 05	Day 27	Year 30	Yes X 1 / No 2
4. Your Mailing Address (Number and Street)			5. Social Security Number			6. Sex
655 EAST DURANGO BLVD.			491-32-6388			Male X 1 / Female 2
(City) SAN ANTONIO	(State) TEXAS	(ZIP Code) 78206				

IMPORTANT—It is illegal for an employee or a member of his family to be covered under more than one enrollment. If you are already covered through the family enrollment of another Federal or District of Columbia employee or annuitant you must register not to enroll or the other enrollment must be canceled or changed to Self Only. Similarly, if a family member listed by you in Part B is covered through his (or her) own enrollment, you cannot elect a family enrollment unless the family member cancels his (or her) enrollment. Also see back of pages 2 and 4.

PART B
Fill in this part if you wish to enroll or change your enrollment in a Health Benefits Plan.

If enrollment is for Self Only, answer item 1. If enrollment is for Self and Family, also answer item 2.

If you are changing your enrollment, also fill in Part D.

1. I elect to enroll in a health benefits plan as shown below. I authorize deductions from my salary, compensation, or annuity to cover my share of the cost of the enrollment. *(Copy the information requested below from back page of brochure of the plan you select.)*

Name of Plan	Option (High or Low)	Enrollment Code
SERVICE BENEFIT PLAN (BLUE CROSS)	STND	1 0 5

2. In space below list all eligible family members without exception: List your spouse first, then your unmarried children under age 22, including (a) legally adopted children and (b) stepchildren, foster children, and illegitimate children who live with you in a regular parent-child relationship. Include also any unmarried child over 22 who became disabled before age 22 and who, because of the disability, is incapable of self-support. *(Attach a doctor's certificate for a disabled child age 22 or over, if one is not already on file.)* DO NOT LIST PARENTS OR OTHERS WHO ARE NOT ELIGIBLE FAMILY MEMBERS. THEY WILL NOT RECEIVE BENEFITS, EVEN IF THEY ARE DEPENDENT ON YOU AND ARE LISTED.

Names of Family Members	Date of Birth (Month, Day, Year)		Names of Family Members	Date of Birth (Month, Day, Year)	
Spouse ALICE LEWIS SESSIONS	06/18/31	1			5
		2			6
		3			7
		4			8

PART C
Fill in this part if you wish NOT to enroll or if you wish to cancel your enrollment.

Place an "X" in item 1 or 2, whichever applies:

1. I elect not to enroll in a plan under the Federal Employees Health Benefits Program.

2. I elect to cancel my present enrollment under the code shown below:

Present Enrollment Code

If you elect to cancel, be sure to read "Cancellation of Enrollment" on back of page 4.

PART D
Fill in this part, as well as Part B, to change your registration.

Answer items 1, 2, and 3 to show Enrollment Code being changed and eligibility for change:

1. Enrollment Code of Present Plan.	2. Number of event which permits change. *(See table on back of page 2 for proper number.)*	3. Date of event which permits change:		
1 0 2	1	Month 11	Day 21	Year 83

PART E
All who register must fill in this part.

Your Signature *(Do not print)* William L Sessions

Date 11/26/83

WARNING—Any intentional false statement in this application or willful misrepresentation relative thereto is a violation of the law punishable by a fine of not more than $10,000 or imprisonment of not more than 5 years, or both. (18 U.S.C. 1001.)

PART F
To be completed by agency.

1. Name and Address (Including ZIP Code) of Employing Office

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

Sign[illegible]

2. Date Received in Employing Office	3. Effective Date of Election
11-28-83	01/01/84
4. Payroll Office No.	5. SF 2811 Report No.
10005697	

REMARKS
For use only by agency.

OPEN SEASON CHANGE MONTHLY PAYROLL

Standard Form 2809 Rev. 8-79

Office of Personnel Management FPM Supplement 890-1

TREAT AS ORIGINAL

b6 b7C

b6 b7C

(Read instructions on back of last page. Use only typewriter or ink.)

TO EMPLOYING OFFICE. SHOW OLD CARRIER'S CONTROL NUMBER ONLY IF ELECTION IS TO CANCEL ENROLLMENT OR TO CHANGE OPTIONS OR TYPE OF ENROLLMENT IN THE SAME PLAN

Old Carrier's Control No.

PART A

ALL WHO REGISTER MUST FILL IN THIS PART.

1. NAME (LAST)	(FIRST)	(MIDDLE INITIAL)	2. DATE OF BIRTH (Use numbers) MONTH	DAY	YEAR	3. ARE YOU NOW MARRIED?
SESSIONS,	William	S.	5	27	30	YES [X] 1 / NO [ ] 2

4. YOUR MAILING ADDRESS (NUMBER AND STREET) (CITY) (STATE) (ZIP CODE): 1101 3rd Street, S.W. Washington, D.C. 20024 Apt. #105

5. SEX: MALE [X] 1 / FEMALE [ ] 2

IMPORTANT

IT IS ILLEGAL FOR AN EMPLOYEE OR A MEMBER OF HIS FAMILY TO BE COVERED UNDER MORE THAN ONE ENROLLMENT. IF YOU ARE ALREADY COVERED THROUGH A FAMILY ENROLLMENT OF ANOTHER FEDERAL OR DISTRICT OF COLUMBIA EMPLOYEE OR ANNUITANT YOU MUST REGISTER NOT TO ENROLL OR THE OTHER ENROLLMENT MUST BE CANCELED OR CHANGED TO SELF ONLY. SIMILARLY, IF A FAMILY MEMBER LISTED BY YOU IN PART B IS COVERED THROUGH HIS (OR HER) OWN ENROLLMENT, YOU CANNOT ELECT A FAMILY ENROLLMENT UNLESS THE FAMILY MEMBER CANCELS HIS (OR HER) ENROLLMENT.

PART B

FILL IN THIS PART IF YOU WISH TO ENROLL OR CHANGE YOUR ENROLLMENT IN A HEALTH BENEFITS PLAN.

If enrollment is for self only, answer item 1. If enrollment is for self and family, also answer item 2.

IF YOU ARE CHANGING YOUR ENROLLMENT ALSO FILL IN PART D.

1. I elect to enroll in a health benefits plan as shown below. I authorize deductions from my salary, compensation, or annuity to cover my share of the cost of the enrollment. (Copy the information requested below from back page of brochure of the plan you select.)

NAME OF PLAN	OPTION (HIGH OR LOW)	ENROLLMENT CODE NUMBER
Blue Cross-Blue Shield High Option	High Option	1 0 2

2. In space below list all eligible family members without exception: List your wife or husband first, then your unmarried children under age 22, including (a) legally adopted children and (b) stepchildren, foster children, and illegitimate children who live with you in a regular parent-child relationship. Include also any unmarried child over 22 who became disabled before age 22 and who, because of that disability is incapable of self-support. (Attach a doctor's certificate for a disabled child age 22 or over, if one is not already on file.) DO NOT LIST PARENTS OR OTHERS WHO ARE NOT ELIGIBLE FAMILY MEMBERS. THEY WILL NOT RECEIVE BENEFITS, EVEN IF THEY ARE DEPENDENT ON YOU AND ARE LISTED.

NAMES OF FAMILY MEMBERS	DATE OF BIRTH (Month, Day, Year)	NAMES OF FAMILY MEMBERS	DATE OF BIRTH (Month, Day, Year)
Wife or Husband Alice	6-18-31 [1]		
	[2]		
	[3]		
	[4]		
	[5]		

b6
b7C

PART C

FILL IN THIS PART IF YOU WISH NOT TO ENROLL OR IF YOU WISH TO CANCEL YOUR ENROLLMENT.

PLACE AN "X" IN ITEM 1 OR 2, WHICHEVER APPLIES:

1. I ELECT NOT TO ENROLL IN A PLAN UNDER THE FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM. [ ]

2. I ELECT TO CANCEL MY PRESENT ENROLLMENT UNDER THE CODE NUMBER SHOWN BELOW: [ ]

Present Enrollment Code Number

PART D

FILL IN THIS PART, AS WELL AS PART B, TO CHANGE YOUR REGISTRATION.

ANSWER ITEMS 1, 2, AND 3 TO SHOW ENROLLMENT CODE BEING CHANGED AND ELIGIBILITY FOR CHANGE.

1. ENROLLMENT CODE NUMBER OF PRESENT PLAN.	2. NUMBER OF EVENT WHICH PERMITS CHANGE. (See table on back of duplicate for proper number.)	3. DATE OF EVENT WHICH PERMITS CHANGE MONTH	DAY	YEAR

PART E

ALL WHO REGISTER MUST FILL IN THIS PART.

William S. Sessions — Aug 14, 1969

(YOUR SIGNATURE—DO NOT PRINT) (DATE)

WARNING.—Any intentional false statement in this application or willful misrepresentation relative thereto is a violation of the law punishable by a fine of not more than $10,000 or imprisonment of not more than 5 years, or both (18 U.S.C. 1001.)

PART F

TO BE COMPLETED BY AGENCY.

1. NAME AND ADDRESS (INCLUDE ZIP CODE) OF EMPLOYING OFFICE: James W. Russell, Staff Asst., Crim. Div., Dept. of Justice, 10th and Pa. Ave., N. W., Wash., D. C., 20530

2. DATE RECEIVED IN EMPLOYING OFFICE: 8-19-69

3. EFFECTIVE DATE OF ELECTION: 8-24-69

4. PAYROLL OFFICE NO.: 15 01 0003

5. SF 2811 REPORT NO.: 69-2

(SIGNATURE OF AUTHORIZED AGENCY OFFICIAL)

REMARKS

FOR USE ONLY BY AGENCY.

Excepted Appointment 8-1-69

COPY

SF 2809-111

Triplicate—For Official Personnel Folder

Standard Form No. 2809
U.S. Civil Service Commission
FPM Supplement 890-1
December 1968

Federal Employees Health Benefits Program

Notice of Change in Health Benefits Enrollment

Part A –Identifying Data

Name (Last, first, middle initial)	Date of Birth	Social Security Number
Sessions, William S.	5-27-30	491-32-6388
Agency and Address (Including ZIP Code)	**Payroll Office Number**	**Effective Date of Change**
Federal Bureau of Investigation Tenth Street and Pennsylvania Ave., N.W. Washington, D. C. 20535	15-02-0001	105
	SF 2811 Record No. 87-204	11-2-87

Item 5 is checked below if you are changing your enrollment. Read the instructions, and complete Part B if your enrollment is terminated and you apply for conversion.

Part B—Termination

Part C—Transfer Out

X

New Enrollment Code Number ———

Part H—Remarks

Employee transferred in from the U. S. Courts as Director of the FBI.

Part I—Date of Notice

(NOTE: Instructions for Employing Offices are on the back of Copy 4 of this form.)

Agency and Address (Including ZIP Code)

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20535

Date

b6
b7C

Copy 4 - For Official Personnel Folder

U.S. Civil Service Commission

FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

NOTICE OF CHANGE IN HEALTH BENEFITS ENROLLMENT

2810 [illegible]

Texas, W.

Part A.—IDENTIFYING DATA

1. NAME (LAST)	(FIRST)	(MIDDLE INITIAL)	2. DATE OF BIRTH	3. CARRIER CONTROL NO.
SESSIONS,	WILLIAM	S.	05-27-30	13049211

4. ADDRESS (INCLUDING ZIP CODE)

10610 West Avenue
San Antonio, Texas 78216

5. PAYROLL OFFICE NO.	6. ENROLLMENT CODE NO.
10 00 5697	1 0 2
7. SOCIAL SECURITY ACCOUNT NUMBER	**8. DATE THIS ACTION BECOMES EFFECTIVE**
491-32-8388	12-24-74

ONLY THE ITEM WHICH IS CHECKED BELOW AFFECTS YOUR ENROLLMENT. READ THAT ITEM CAREFULLY AND FOLLOW ANY PERTINENT INSTRUCTIONS. KEEP THIS FORM UNLESS YOUR ENROLLMENT IS TERMINATED AND YOU APPLY FOR CONVERSION.

Part B.—TERMINATION

☐ YOUR ENROLLMENT TERMINATES ON THE DATE IN PART A, ITEM 8, ABOVE.

Part C.— CHANGE IN PLAN

☐ YOUR ENROLLMENT SHOWN IN PART A, ITEM 6, ABOVE HAS BEEN TERMINATED BECAUSE OF YOUR ENROLLMENT IN ANOTHER PLAN.

Part D.—TRANSFER OUT

☐ YOUR ENROLLMENT CONTINUES BUT IS TRANSFERRED TO YOUR NEW PAYROLL OFFICE (OR RETIREMENT SYSTEM):

Part E.—TRANSFER IN

YOUR NEW PAYROLL OFFICE (OR RETIREMENT SYSTEM) SHOWN IN PART K BELOW HAS ACCEPTED TRANSFER OF YOUR ENROLLMENT AND WILL CONTINUE IT. XX

Part F.—SUSPENSION

☐ YOUR ENROLLMENT HAS BEEN SUSPENDED, EFFECTIVE ON THE DATE IN PART A, ITEM 8, ABOVE.

Part G.— REINSTATEMENT

YOUR ENROLLMENT HAS BEEN REINSTATED, EFFECTIVE ON THE DATE IN PART A, ITEM 8, ABOVE. ☐

Part H.— CHANGE IN NAME OF ENROLLEE

THE NAME IN WHICH THIS ENROLLMENT IS CARRIED HAS BEEN CHANGED TO: ☐

NAME	DATE OF BIRTH	SEX
		☐ MALE ☐ FEMALE

ADDRESS (INCLUDING ZIP CODE) IF DIFFERENT FROM PART A, ITEM 4, ABOVE

Part I.— CHANGE IN ENROLLMENT — SURVIVOR ANNUITANT

YOUR ENROLLMENT HAS BEEN CHANGED FROM FAMILY COVERAGE TO SELF ONLY. YOUR PLAN WILL SEND YOU A NEW IDENTIFICATION CARD. ☐

YOUR NEW ENROLLMENT CODE NUMBER

(NOTE: THIS ITEM TO BE COMPLETED BY RETIREMENT SYSTEMS ONLY)

Part J.— REMARKS

Transfer from U. S. Attorney's Office, San Antonio, Texas

Part K.— DATE OF NOTICE

[redacted] / / /

SIGNATURE OF AUTHORIZED AGENCY OFFICIAL — DATE

Administrative Office of the U.S. Courts Washington, D. C. 20544

NAME OF AGENCY — ADDRESS (INCLUDING ZIP CODE)

b6
b7C

FILE COPY

Quadruplicate —For Official Personnel Folder

[illegible] 2810
October 1972
FPM Supplement 510-1

Transferred

U.S. Civil Service Commission

NOTICE OF CHANGE IN HEALTH BENEFITS ENROLLMENT

Part A.— IDENTIFYING DATA SS# 491-32-6388

1. NAME (LAST)	(FIRST)	(MIDDLE INITIAL)	2. DATE OF BIRTH	3. [illegible] NO.
SESSIONS	WILLIAM	S.	05-27-30	13049211

4. ADDRESS (INCLUDING ZIP CODE)

11726 West. Ave., Apt. D-1
San Antonio, Texas

5. PAYROLL OFFICE NO.	6. [illegible] CODE NO.
15 01 0003	102

7. DATE THIS ACTION BECOMES EFFECTIVE

November 14, 1971

ONLY THE ITEM WHICH IS CHECKED BELOW AFFECTS YOUR ENROLLMENT. READ THAT ITEM CAREFULLY AND FOLLOW ANY PERTINENT INSTRUCTIONS. KEEP THIS FORM UNLESS YOUR ENROLLMENT IS TERMINATED AND YOU APPLY FOR CONVERSION.

Part B.—TERMINATION

☐ YOUR ENROLLMENT TERMINATES ON THE DATE IN PART A, ITEM 7, ABOVE.

Part C.— CHANGE IN PLAN

☐ YOUR ENROLLMENT SHOWN IN PART A, ITEM 6, ABOVE HAS BEEN TERMINATED BECAUSE OF YOUR ENROLLMENT IN ANOTHER PLAN.

Part D.—TRANSFER OUT

☐ YOUR ENROLLMENT CONTINUES BUT IS TRANSFERRED TO YOUR NEW PAYROLL OFFICE (OR RETIREMENT SYSTEM):

Part E.—TRANSFER IN

YOUR NEW PAYROLL OFFICE (OR RETIREMENT SYSTEM) SHOWN IN PART K BELOW HAS ACCEPTED TRANSFER OF YOUR ENROLLMENT AND WILL CONTINUE IT. ☒

Part F.— SUSPENSION

☐ YOUR ENROLLMENT HAS BEEN SUSPENDED, EFFECTIVE ON THE DATE IN PART A, ITEM 7, ABOVE.

Part G.— REINSTATEMENT

YOUR ENROLLMENT HAS BEEN REINSTATED, EFFECTIVE ON THE DATE IN PART A, ITEM 7, ABOVE. ☐

Part H.— CHANGE IN NAME OF ENROLLEE

THE NAME IN WHICH THIS ENROLLMENT IS CARRIED HAS BEEN CHANGED TO: ☐

NAME	DATE OF BIRTH	SEX
		☐ MALE ☐ FEMALE

ADDRESS (INCLUDING ZIP CODE) IF DIFFERENT FROM PART A, ITEM 4, ABOVE

Part I.— CHANGE IN ENROLLMENT — SURVIVOR ANNUITANT

YOUR ENROLLMENT HAS BEEN CHANGED FROM FAMILY COVERAGE TO SELF ONLY. YOUR PLAN WILL SEND YOU A NEW IDENTIFICATION CARD. ☐

YOUR NEW ENROLLMENT CODE NUMBER

(NOTE: THIS ITEM TO BE COMPLETED BY RETIREMENT SYSTEMS ONLY)

Part J.— REMARKS

From U.S. Attorney's Office-San Antonio, Tex.-Payroll# 15 00 8180

Part X.— DATE OF NOTICE

FILE COPY

[signature] 11-24-71

SIGNATURE OF AUTHORIZED AGENCY OFFICIAL — DATE

U.S. Department of Justice — Washington, D.C., 20530

NAME OF AGENCY — ADDRESS (INCLUDING ZIP CODE)

Quadruplicate —For Official Personnel Folder

Standard Form No. 2810
April 1967
GSA Supplement FPO-1

...Service Commission
...Supplement 890-1
November 1965

FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

NOTICE OF CHANGE IN HEALTH BENEFITS ENROLLMENT

23

Part A.—IDENTIFYING DATA

1. NAME (LAST)	(FIRST)	(MIDDLE INITIAL)	2. DATE OF BIRTH	3. CARRIER CON
Sessions,	William	S.	5/27/30	13049211

4. ADDRESS: 11726 West. Ave. Apt. D-1, San Antonio, Texas

5. PAYROLL OFFICE NO.	6. ENROLLMENT
1500 8180	1 0 2

7. DATE THIS ACTION BECOMES EFFECTIVE: Nov. 14, 1971

ONLY THE ITEM WHICH IS CHECK... W AFFECTS YOUR ENROLLMENT. READ THAT ITEM CAREFULLY AND FOLLOW ANY P INSTRUCTIONS. KEEP THIS FORM U...S YOUR ENROLLMENT IS TERMINATED AND YOU APPLY FOR CONVERSION.

Part B.—TERMINATION

☐ YOUR ENROLLMENT TERMINATES ON THE DATE IN PART A, ITEM 7, ABOVE.

Part C.—CHANGE IN PLAN

☐ YOUR ENROLLMENT SHOWN IN PART A, ITEM 6, ABOVE HAS BEEN TERMINATED BECAUSE OF YOUR ENROLLMENT IN ANOTHE PLAN.

Part D.—TRANSFER OUT

YOUR ENROLLMENT CONTINUES BUT IS TRANSFERRED TO YOUR NEW PAYROLL OFFICE (OR RETIREMENT SYSTEM):

☒ U.S.Dept. of Justice
10th & Pennsylvania, Ave.,N.W.
Washington, D.C., 20530-Room 1410

Part E.—TRANSFER IN

YOUR NEW PAYROLL OFFICE (OR RETIREMENT SYSTEM) SHOWN IN PART K BELOW HAS ACCEPTED TRANSFER OF YOUR ENROLLMENT AND WILL CONTINUE IT.

Part F.—SUSPENSION

☐ YOUR ENROLLMENT HAS BEEN SUSPENDED, EFFECTIVE ON THE DATE IN PART A, ITEM 7, ABOVE.

Part G.—REINSTATEMENT

YOUR ENROLLMENT HAS BEEN REINSTATED, EFFECTIVE ON THE DATE IN PART A, ITEM 7, ABOVE. ☐

Part H.—CHANGE IN NAME OF ENROLLEE

THE NAME IN WHICH THIS ENROLLMENT IS CARRIED HAS BEEN CHANGED TO: ☐

NAME | ADDRESS IF DIFFERENT FROM PART A, ITEM 4, ABOVE | DATE OF BIRTH

Part I.—CHANGE IN ENROLLMENT—SURVIVOR ANNUITANT

YOUR ENROLLMENT HAS BEEN CHANGED FROM FAMILY COVERAGE TO SELF ONLY. YOUR PLAN WILL SEND YOU A NEW IDENTIFICATION CARD. ☐

YOUR NEW ENROLLMENT CODE NUMBER: ☐

(NOTE: THIS ITEM TO BE COMPLETED BY RETIREMENT SYSTEMS ONLY)

Part J.—REMARKS

Transfer of payroll functions to Main Dept. of Justice Payroll Office No. 15 01 00

Part K.—DATE OF NOTICE

FILE COPY

SIGNATURE OF AUTHORIZED AGENCY OFFICIAL | 11/10/71 DATE

U. S. Marshal, P O Box 359, San Antonio, Texas 78292

NAME OF AGENCY | ADDRESS

☆ U. S. GOVERNMENT PRINTING OFFICE: 1965 — 788-490

Quadruplicate—To Employ...

Insert ... [illegible]

FEDERAL EMPLOYEES HEALTH BENEFITS ACT

A. IDENTIFYING DATA

1. NAME (LAST)	(FIRST)	(MIDDLE INITIAL)	2. DATE OF BIRTH	3. CARRIER CONTRACT
Sessions	William	S	5/27/30	1304 13049211

4. ADDRESS (NUMBER AND STREET)	5. PAYROLL OFFICE NO.	6. ENROLLMENT CODE
P O Box 1701	1500 8180	1 0 2

(CITY AND ZONE NUMBER)	(STATE)	7. DATE ACTION BECOMES EFFECTIVE
San Antonio, Texas		8/5/71

B. TERMINATION

☐ ENROLLMENT TERMINATES EFFECTIVE ON THE DATE SHOWN IN ITEM 7, ABOVE, WITH ELIGIBILITY TO CONVERT TO A NONGROUP CONTRACT.

C. CHANGE IN PLAN

☐ ENROLLMENT SHOWN BY ITEM 6. ABOVE, HAS BEEN TERMINATED BECAUSE OF ELECTION OF ANOTHER PLAN.

D. TRANSFER OUT

☐ NAME AND ADDRESS OF NEW PAYROLL OFFICE (OR RETIREMENT SYSTEM) TO WHICH TRANSFERRING:

E. TRANSFER IN

ENROLLMENT ACCEPTED BY THIS AGENCY

F. SUSPENSION

☐ ENROLLMENT HAS BEEN SUSPENDED, EFFECTIVE ON DATE SHOWN IN ITEM 7, ABOVE, WHILE ENROLLEE IS ON ACTIVE MILITARY DUTY OR FOR THE REASON STATED IN REMARKS.

G. REINSTATEMENT

ENROLLMENT HAS BEEN REINSTATED, EFFECTIVE ON DATE SHOWN IN ITEM 7, ABOVE.

H. CHANGE IN NAME OF ENROLLEE

ENROLLMENT HAS BEEN CHANGED TO: ☐

NAME | ADDRESS IF DIFFERENT FROM ITEM 4. ABOVE | DATE OF C

I. CHANGE IN ENROLLMENT — SURVIVOR ANNUITANT

ENROLLMENT HAS BEEN CHANGED FROM FAMILY COVERAGE TO SELF ONLY. ☐

NEW ENROLLMENT CODE NUMBER

J. REMARKS

Transferred in from Criminal Division, Dept. of Justice, Washington, D. C.

K. DATE OF NOTICE

FILE COPY

SIGNATURE OF AUTHORIZED AGENCY OFFICIAL — DATE: Aug. 23, 1971

U. S. Marshal, P O Box 359, San Antonio, Texas 78289

TYPED NAME AND TITLE — ADDRESS

U.S. Civil Service Commission

NOTICE OF CHANGE IN HEALTH BENEFITS ENROLLMENT

Part A.—IDENTIFYING DATA

1. NAME (LAST)	(FIRST)	(MIDDLE INITIAL)	2. DATE OF BIRTH	3. CARRIER CONTROL NO.
Sessions	William	S.	5-27-30	13049211

4. ADDRESS (INCLUDING ZIP CODE)

Office of the U.S. Attorney
U.S. Courthouse- PO Box 1701
615 Houston Street
San Antonio, Texas 78206

5. PAYROLL OFFICE NO.	6. ENROLLMENT CODE NO.
15-01-0003	1 0 2

7. DATE THIS ACTION BECOMES EFFECTIVE

August 4, 1971

ONLY THE ITEM WHICH IS CHECKED BELOW AFFECTS YOUR ENROLLMENT. READ THAT ITEM CAREFULLY AND FOLLOW ANY PERTINENT INSTRUCTIONS. KEEP THIS FORM UNLESS YOUR ENROLLMENT IS TERMINATED AND YOU APPLY FOR CONVERSION.

Part B.—TERMINATION

☐ YOUR ENROLLMENT TERMINATES ON THE DATE IN PART A, ITEM 7, ABOVE.

Part C.— CHANGE IN PLAN

☐ YOUR ENROLLMENT SHOWN IN PART A, ITEM 6, ABOVE HAS BEEN TERMINATED BECAUSE OF YOUR ENROLLMENT IN ANOTHER PLAN.

Part D.—TRANSFER OUT

☒ YOUR ENROLLMENT CONTINUES BUT IS TRANSFERRED TO YOUR NEW PAYROLL OFFICE (OR RETIREMENT SYSTEM):

Office of the U.S. Attorney
San Antonio, Texas

Part E.—TRANSFER IN

YOUR NEW PAYROLL OFFICE (OR RETIREMENT SYSTEM) SHOWN IN PART K BELOW HAS ACCEPTED TRANSFER OF YOUR ENROLLMENT AND WILL CONTINUE IT. ☐

Part F.—SUSPENSION

☐ YOUR ENROLLMENT HAS BEEN SUSPENDED, EFFECTIVE ON THE DATE IN PART A, ITEM 7, ABOVE.

Part G.— REINSTATEMENT

YOUR ENROLLMENT HAS BEEN REINSTATED, EFFECTIVE ON THE DATE IN PART A, ITEM 7, ABOVE. ☐

Part H.— CHANGE IN NAME OF ENROLLEE

THE NAME IN WHICH THIS ENROLLMENT IS CARRIED HAS BEEN CHANGED TO: ☐

NAME	DATE OF BIRTH	SEX
		☐ MALE ☐ FEMALE

ADDRESS (INCLUDING ZIP CODE) IF DIFFERENT FROM PART A, ITEM 4, ABOVE

Part I.— CHANGE IN ENROLLMENT — SURVIVOR ANNUITANT

YOUR ENROLLMENT HAS BEEN CHANGED FROM FAMILY COVERAGE TO SELF ONLY. YOUR PLAN WILL SEND YOU A NEW IDENTIFICATION CARD. ☐

YOUR NEW ENROLLMENT CODE NUMBER

(NOTE: THIS ITEM TO BE COMPLETED BY RETIREMENT SYSTEMS ONLY)

Part J.— REMARKS

Employee transfer Eff 8-4-71 - Criminal Division

Part K.— DATE OF NOTICE

FILE COPY

SIGNATURE OF AUTHORIZED AGENCY OFFICIAL

8-9-71
DATE

Department of Justice
NAME OF AGENCY

Washington, D.C. 20530
ADDRESS (INCLUDING ZIP CODE)

Quadruplicate —For Official Personnel Folder

Standard Form No.
April 1969
FPM Supplement

FEGLI

Federal Employees' Group Life Insurance Program

CONTINUATION OF LIFE INSURANCE COVERAGE

As a Retiree or Compensationer

A GENERAL INSTRUCTIONS:

- Complete this form if you retire or begin receiving compensation on or after January 1, 1990, and you are continuing your FEGLI coverage.
- Read the accompanying information carefully.
- Type or print in ink.
- Return the completed form to your employing office.

B Fill in the Identifying Information Requested Below

Name *(Last, first, middle)*	Date of Birth *(Month, day, year)*	Social Security Number
SESSIONS, WILLIAM S.	5-27-30	491-32-6388

Employing Department or Agency	Agency Location *(City, State, ZIP Code)*	Compensation Claim Number *(if applicable)*
Department of Justice Federal Bureau of Investigation	Washington, D.C. 20535	

C Basic Life Insurance Coverage

If you are eligible, your Basic Life Insurance will continue automatically -- generally at the same level of coverage in force at retirement -- until age 65. By completing this form, you are choosing the amount of Basic Life Insurance coverage you will have after you reach age 65. (If you are already 65 or older and choose the 75% Reduction or the 50% Reduction, the elected reduction will begin at retirement).

For Basic Life Insurance coverage between retirement and age 65, you will pay the same premiums as active employees. If you elect to retain more than the minimum level of coverage after age 65 -- that is, if you elect the 50% Reduction or the No Reduction -- you will pay additional premiums beginning at retirement and continuing for life.

Before electing the level of coverage you will have after age 65, be sure to review the detailed information provided on page 3. The premiums associated with the different levels of coverage are shown in a table at the bottom of that page.

SIGN AND DATE ONLY ONE OF THE BOXES BELOW. *(DO NOT SIGN MORE THAN ONE.)* THEN CROSS OUT THE OTHER TWO BOXES. Failure to cross out the two boxes will not invalidate this form.

1 I WANT THE 75% REDUCTION (MINIMUM COVERAGE)	2 I WANT THE 50% REDUCTION	3 I WANT NO REDUCTION (MAXIMUM COVERAGE)
I understand that after I reach age 65 (or upon retirement, if I'm older than 65) the amount of my basic insurance coverage will reduce at the rate of 2% per month until it reaches 25% of my basic insurance amount at retirement. I understand that after I reach age 65 there will be no premium deductions from my annuity or compensation for this minimum coverage. I understand that I cannot change my election to a lesser reduction at a later date.	I authorize deductions to be made from my annuity or compensation to pay the full cost of this additional protection. I understand that after I reach age 65 (or upon retirement, if I'm older than 65) the amount of my basic insurance coverage will reduce at the rate of 1% per month until it reaches 50% of my basic insurance amount at retirement. I understand that the only change I may make at a later date is to the 75% Reduction.	I authorize deductions to be made from my annuity or compensation to pay the full cost of this additional protection. I understand that there will be no reduction in the amount of my basic insurance coverage after I reach age 65 (or upon retirement, if I'm older than 65). I understand that the only change I may make at a later date is to the 75% Reduction.
Signature *(Do not print)* William S. Sessions	Signature *(Do not print)*	Signature *(Do not print)*
Date July 27, 1993	Date	Date

D Optional Life Insurance Coverage

If you continue Basic Life Insurance coverage as a retiree or compensationer, your present optional life insurance elections will be automatically extended unless (1) you complete an SF 2817, declining those options, (2) you fail to meet the continuation requirements for optional life insurance, or (3) you convert to an individual policy. You will pay the full cost of optional insurance (through deductions in your annuity or compensation) until age 65. After age 65, no further withholdings will be required; however, your optional coverage will be reduced over time. See page 4 for a more detailed discussion.

U.S. Office of Personnel Management
FPM Supplement 870-1
NSN 7540-01-231 5565

SF 2818
Revised January 1990
Previous editions are not usable

INSTRUCTIONS TO EMPLOYING AGENCIES

Completion of Certification

1. This certification must be completed in triplicate whenever an employee's insurance terminates or is scheduled to terminate due to:
   a. Death
   b. Retirement
   c. Completion of 12 months in non-pay status
   d. Any other reason, if the employee wants to convert insurance, except under the following circumstances:
      (1) Employee waived or declined on SF 2817.
      (2) If it is known that, within 3 calendar days after the insurance terminates, the employee will return to Government service in the same position or another position and he or she will be eligible to reacquire insurance coverage.
2. In item 4b, indicate the retirement system under which the employee is covered. If other than those shown, please specify (see FPM Supplement 870-1, subsection S6-2(b)).
3. In item 7, give the date of *Notice of Conversion Privilege* (SF 2819). In case of death where employee had no Option C coverage, leave this item blank.
4. In item 9, "effective date of continuous coverage under the FEGLI Program" means the date the employee began FEGLI coverage without a break for any reason, except separation from the Federal service or exclusion by law or regulation. In addition to the effective date of continuous FEGLI coverage, indicate the dates of any break in service.
5. In item 10b, (and 11b and 12b) "effective date of election" means the date the employee began the optional FEGLI coverage without a break for any reason, except separation from the Federal service or exclusion by law or regulation.
6. Appropriate officials must verify that the employee's personnel and payroll records are consistent with the information reported on this form. The two certifications (in items 13 and 14) may not be made by the same official; however, a payroll certification may be made by a personnel officer who has access to payroll records.
7. If this certification is prepared for reasons other than separation for retirement, death, or end of 12 months in non-pay status, **DO NOT** send the SF 2821 to OPM. Give or mail the original and duplicate to the employee, with the SF 2819, for conversion purposes.
8. IMPORTANT: When a duplicate SF 2821 is issued to replace one which is lost, it must be clearly marked "DUPLICATE".

Disposition of Certification

1. **Death of Employee**
   a. Send duplicate (Part 2) of SF 2821 to the Office of Federal Employees' Group Life Insurance, 4 East 24th Street, New York, NY 10010.
   b. Keep the original (preferably in the Official Personnel Folder or its equivalent) for attachment to a claim for death benefits (Form FE 6) when received.
   c. If no claim is received, send original SF 2821, upon request, to the Office of Federal Employees' Group Life Insurance (OFEGLI).
   d. If the deceased employee has any designation of beneficiary forms (SF 54 or SF 2823) on file, they must be attached to the original SF 2821 when it is sent to OFEGLI.

2. **Retirement of Employee**
   a. If the retiring employee is applying for an immediate annuity and is eligible to continue life insurance into retirement, attach the original SF 2821 (Part 1), all designations of beneficiary (SF 54 or SF 2823), if any, and all life insurance elections (SF 176 or SF 2817), to the Application for Retirement and send these documents to OPM. Give the duplicate (Part 2) of the SF 2821 to the employee. (NOTE: In a disability retirement case where the retirement application has already been sent to OPM, attach the original SF 2821 and other insurance forms to the "final" Individual Retirement Record [SF 2806/SF3100 or equivalent].)
   b. If the employee is continuing Basic insurance into retirement, have him or her complete SF 2818, *Continuation of Life Insurance Coverage*. Attach the complete SF 2818 to the original SF 2821.
   c. A retiring employee who wants to continue Basic Life insurance, but not one or more of the options for which he or she would otherwise be eligible, must complete a SF 2817, declining those options. If the effective date of the change in coverage comes before the separation for retirement, process the SF 2817 as usual and attach the original, with all other life insurance elections, to the Application for Retirement. However, if the effective date of the change in coverage falls after the date of separation for retirement, complete that portion of the SF 2817 designated FOR EMPLOYING OFFICE USE ONLY, give the employee his or her copy, and attach both the original and Part 2 to the SF 2821. The SF 2821 should be completed to reflect the retiring employee's insurance status **at the time of separation for retirement** and attached to the Application for Retirement.
   d. If the retiring employee wants to continue Basic Life insurance, but convert one or more of the options, complete SF 2821 and submit the original (Part 1) with the Application for Retirement, as indicated in item 2a, above. The employee should submit the duplicate SF 2821 (Part 2) with a completed SF 2819, indicating which options he or she wishes to convert, to OFEGLI.
   e. If the retiring employee prefers to convert both Basic Life and all optional insurance(s) to an individual policy, give him or her the original and duplicate (Parts 1 and 2) copies of the SF 2821 and a SF 2819. Retain designations of beneficiary (SF 54 or SF 2823), if any.
   f. If the retiring employee is not eligible to continue life insurance coverage into retirement, give him or her the original and duplicate (Parts 1 and 2) copies of the SF 2821 and a SF 2819. Retain designations of beneficiary (SF 54 or SF 2823), if any.

3. **Employee is Receiving Compensation Benefits**
   a. Before completing items 10 through 12, contact the district Office of Workers' Compensation, if necessary, to confirm whether the employee still has any of the optional insurance(s).
   b. If the employee is continuing Basic Life insurance, have him or her complete SF 2818, *Continuation of Life Insurance Coverage*. Attach the completed form to the original SF 2821 (Part 1). Attach all designations of beneficiary (SF 54 or SF 2823), if any, and all Life Insurance Elections (SF 176 and SF 2817) and send them to the Office of Personnel Management, Employee Service and Records Center, Boyers, PA 16017. Give the duplicate copy (Part 2) of the SF 2821 to the employee.
   c. If the employee is continuing Basic Life insurance but converting one or more of the options, have him or her complete SF 2818, *Continuation of Life Insurance Coverage*, attach the completed form to the original SF 2821, and send them to the Office of Personnel Management at the address in item 3b, above. The employee should submit the duplicate SF 2821 (Part 2) with a completed SF 2819 to OFEGLI.
   d. If the employee prefers to convert all group insurance to an individual policy, give him or her the original and duplicate (Parts 1 and 2) copies of the SF 2821, and a SF 2819. Retain designations of beneficiary (SF 54 or SF 2823), if any.
   e. If the employee is not eligible to continue life insurance as a compensationer, give him or her the original and duplicate (Parts 1 and 2) copies of the SF 2821, and a SF 2819. Retain designations of beneficiary (SF 54 or SF 2823), if any.

4. **All Other Cases**
   Give or mail the original and duplicate (Parts 1 and 2) to the employee.

5. **In All Cases**
   Retain the file copy (Part 3) of the SF 2821 in the employee's Official Personnel Folder or its equivalent.

Prompt Certification Required

The time in which an employee may convert group life insurance to an individual policy is limited. This SF 2821 must be completed and delivered or mailed promptly. See FPM Supplement 870-1.

AGENCY CERTIFICATION OF INSURANCE STATUS

Federal Employees' Group Life Insurance Program

To Agency: See Reverse for Information and Instructions

1. Name of employee	2. Date of birth *(mo., day, yr.)*	3. Social Security Number
Sessions, William S.	5-27-30	491-32-6388

4a. Event requiring certification

- [ ] Separation (includes resignation)
- [X] Retirement
- [ ] Died as an employee
  Had employee filed Application for Retirement (SF 2801 or SF 3107) with OPM?
  - [ ] No
  - [ ] Yes
- [ ] Died as a reemployed annuitant
- [ ] End of 12 months non-pay status
- [ ] Other *(Specify)*

4b. Employee's Retirement System

- [X] CSRS/FERS
- [ ] TVA
- [ ] DCRS*
- [ ] FSRS
- [ ] CIA
- [ ] FICA
- [ ] Other *(Specify)*

* D.C. Police & Fire/Public School Teachers

5. Disposition of Designations of Beneficiar (SF 54, SF 2823)

- [ ] Attached
- [X] None on file with this agency
- [ ] On file in employee's Official Personne Folder

6. Date of event checked in item 4	7. Date of SF 2819, *Notice of Conversion Privilege* - ISSUANCE IS MANDATORY *(Prepare SF 2819 for each retiring employee)*
7-19-93	7-19-93

8. Annual Basic Pay (not basic insurance amount) on date in item 6 *(Convert hourly, daily, piecework, etc., rate to annual rate)*	9. Effective date of Continuous Coverage under the FEGLI Program *(If any break in service, list dates)*
$133,600	4-4-75

10a. Did employee have Option A - Standard insurance on date in item 6?

- [X] No
- [ ] Yes → 10b. Effective date of election:

11a. Did employee have Option C - Family Insurance on date in item 6?

- [X] No
- [ ] Yes → 11b. Effective date of election:

12a. Did employee have Option B - Additional Insurance on date in item 6?

- [X] No
- [ ] Yes →

12b. Effective date of election	12c. Number of multiples on date in item 6	12d. Lowest number of multiples during last 5 years

13. Personnel Records Certification ***(This form will not be accepted without dual certification.)***

I certify that the above information was obtained from, and correctly reflects, official personnel records, and that the employee was covered by Federal Employees' Group Life Insurance on the date in item 6.

13a. [redacted] *(Signature acceptable)*

13e. Name and address of agency *(Including ZIP Code)*

FEDERAL BUREAU OF INVESTIGATION
10TH & PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20535

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13c. Title: EMPL. INSURANCE BENEFITS OFFICER

13d. Date: 7-28-93

13f. Telephone number *(Including Area Code)*: (202) 324-3771

14. Payroll Records Certification ***(This form will not be accepted without dual certification.)***

I certify that I have compared the annual basic pay shown in item 8, above, with current payroll records and the figures agree.

Payroll deductions were being made or would have been made if the employee had been in pay status for the alpha code (Insurance code and SF 50 equivalent) on the date in item 6.

Alpha Code: C

14a. [redacted] *(Signature acceptable)*

14f. Payroll Office Number: 15-02-0001

14g. Name and address of Payroll Office *(If different from that given in item 13e)*

14c. Title: AUTHORIZED CERTIFYING OFFICER

14d. Telephone number *(Including Area Code)*	14e. Date
202 324-5880	07-29-93

FEGLI

LIFE INSURANCE ELECTION

Federal Employees' Group Life Insurance Program

See Privacy Act Information on Back of Part 3

1 General Instructions: By law, a person who is not excluded from coverage automatically has Basic Life insurance, unless he or she waives all coverage. When you first become eligible for FEGLI, you have the choice of (1) electing Basic Life and any or all of the options, (2) electing Basic Life but declining all of the options, or (3) waiving all life insurance coverage. If you are changing your election, see page 6.

To complete this form:
- Read page 6 carefully
- Type or print in ink
- Do not separate the parts. Your employing office must certify the completed form and will return your copy to you. This form should be kept with your SF 2817A (SF 2817B for Postal Employees).

2 Fill in identifying information

Name (Last)	(First)	(Middle)	Date of Birth (Month, Day, Year)	Social Security Number
Sessions,	William	S.	May 27, 1930	491 | 32 | 6388

Employing Department or Agency	Agency Location (City, State, Zip Code)
Federal Bureau of Investigation	Washington, D. C. 20535

3 **To elect Basic Life,** sign and date below. If you do not elect Basic Life, you may not elect any form of optional insurance. If you do not want any insurance at all, skip to section 5.

Basic Life

I want the Basic Life insurance. I authorize deductions to pay my share of the cost.

Signature *(Do not print)*: William S. Sessions

Date *(Month, Day, Year)*: 12-31-87

4 **If you have elected Basic Life, you may elect any or all of the following options.** Sign the box below for any option(s) you want. (You will not have coverage for any option(s) for which you do not sign.)

Option A - Standard	Option B - Additional	Option C - Family
I want the Standard $10,000 optional insurance. I authorize deductions to pay the full cost.	I want the Additional optional insurance in the multiple of my annual basic pay I indicate below. I authorize deductions to pay the full cost. (Indicate multiple by marking "X" in the appropriate box. Do not mark more than one box.) ☐ 1 times my pay ☐ 2 times my pay ☐ 3 times my pay ☐ 4 times my pay ☐ 5 times my pay	I want the Family optional insurance. I understand that in the event of the death of my spouse I would receive $5,000 and upon the death of a child I would receive $2,500. I authorize deductions to pay the full cost.
Signature *(Do not print)* / Date	Signature *(Do not print)* / Date	Signature *(Do not print)* / Date

5 **If you want NO life insurance coverage at all,** sign and date below.

Waiver of all Life Insurance Coverage

I want no insurance coverage at all. I understand that any insurance I have will stop at the end of the pay period in which my employing office receives this waiver and that I cannot get Basic Life insurance unless I (1) wait at least one year after I sign this form, (2) am under age 50 when I apply, AND (3) give satisfactory medical evidence of insurability. I understand that I cannot get any optional insurance unless I first have Basic Life.

Signature *(Do not print)* / Date

FOR EMPLOYING OFFICE USE ONLY

Certification
I certify that the above named employee is eligible for the insurance coverage he or she has elected above.

Signa[redacted]

Date of receipt in employing office *(mo, dy, yr)*: 12/31/87

Number of event permitting change: 5A

Effective date of coverage *(mo, dy, yr)*: 12/31/87

See Table of Effective Dates in SF 2817A or SF 2817B

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[redacted] certified by the employing office, together with SF 2817A, loyees Group Life Insurance Program" (SF 2817B for Postal Employees), constitute certificate of Insurance.

3

older

Standard Form 2817
(Formerly Standard Form 176)
Rev. June 1984
FPM Supplement 870-1

FEGLI

LIFE INSURANCE ELECTION

Federal Employees' Group Life Insurance Program

JUL 8 10 11 AM '85
ADMIN. OFF. U.S. COURTS
LIBRARY BRANCH RECEIVED

See Privacy Act Information on Back of Part 3

1 General Instructions: By law, a person who is not excluded from coverage automatically has Basic Life insurance, unless he or she waives all coverage. When you first become eligible for FEGLI, you have the choice of (1) electing Basic Life and any or all of the options, (2) electing Basic Life but declining all of the options, or (3) waiving all life insurance coverage. If you are changing your election, see page 6.

To complete this form:
- Read page 6 carefully
- Type or print in ink
- Do not separate the parts. Your employing office must certify the completed form and will return your copy to you. This form should be kept with your SF 2817A (SF 2817B for Postal Employees).

2 Fill in identifying information

Name (Last)	(First)	(Middle)	Date of Birth (Month, Day, Year)	Social Security Number
SESSIONS	WILLIAM	STEELE	MAY 27, 1930	491 | 32 | 6388

Employing Department or Agency	Agency Location (City, State, Zip Code)
Administrative Office of the United States Courts	United States District Court San Antonio, Texas 78206

3 To elect Basic Life, sign and date below. If you do not elect Basic Life, you may not elect any form of optional insurance. If you do not want any insurance at all, skip to section 5.

Basic Life

I want the Basic Life insurance. I authorize deductions to pay my share of the cost.

Signature (Do not print): William S Sessions — Date (Month, Day, Year): June 28, 1985

4 If you have elected Basic Life, you may elect any or all of the following options. Sign the box below for any option(s) you want. (You will not have coverage for any option(s) for which you do not sign.)

Option A - Standard

I want the Standard $10,000 optional insurance. I authorize deductions to pay the full cost.

Signature (Do not print): William S Sessions — Date: 6/28/85

Option B - Additional

I want the Additional optional insurance in the multiple of my annual basic pay I indicate below. I authorize deductions to pay the full cost. (Indicate multiple by marking "X" in the appropriate box. Do not mark more than one box.)

- [ ] 1 times my pay
- [X] 2 times my pay
- [ ] 3 times my pay
- [ ] 4 times my pay
- [ ] 5 times my pay

Signature (Do not print): William S Sessions — Date: 6/28/85

Option C - Family

I want the Family optional insurance. I understand that in the event of the death of my spouse I would receive $5,000 and upon the death of a child I would receive $2,500. I authorize deductions to pay the full cost.

Signature (Do not print): William S Sessions — Date: 6/28/85

5 If you want NO life insurance coverage at all, sign and date below.

Waiver of all Life Insurance Coverage

I want no insurance coverage at all. I understand that any insurance I have will stop at the end of the pay period in which my employing office receives this waiver and that I cannot get Basic Life insurance unless I (1) wait at least one year after I sign this form, (2) am under age 50 when I apply, AND (3) give satisfactory medical evidence of insurability. I understand that I cannot get any optional insurance unless I first have Basic Life.

Signature (Do not print): — Date:

FOR EMPLOYING OFFICE USE ONLY

Certification
I certify that the above named employee is eligible for the insurance coverage he or she has elected above.

Date of receipt in employing office (mo, dy, yr): 6/28/85

Number of event permitting change:

Effective date of coverage (mo, dy, yr): 8/1/85

See Table of Effective Dates in SF 2817A or SF 2817B

The employee's copy of this form, when certified by the employing office, together with SF 2817A, "The Federal Employees Group Life Insurance Program" (SF 2817B for Postal Employees), constitute the employee's Certificate of Insurance.

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PART 1—File in Official Personnel Folder
U.S. Office of Personnel Management
Previous editions usable

TREAT AS ORIGINAL

Standard Form 2817
(Formerly Standard Form 17
Rev. June 1984

FEGLI

LIFE INSURANCE ELECTION

Federal Employees Group Life Insurance Program

See Privacy Act Information on Back of Part 3

1 General Instructions

By law, a person who is not excluded from coverage automatically has Basic Life insurance, unless he or she waives all coverage. You have the choice of (1) electing Basic Life and any or all of the options, (2) electing Basic Life, but declining all of the options, or (3) waiving all life insurance coverage.

To complete this form:

- Read page—carefully
- Type or print in ink
- Do not separate the parts. Your employing office must certify th completed form and will return your copy to you. This form should be kept with your SF 2817A (SF 2817B for Postal Employees).

2 Fill in identifying information

Name (Last)	(First)	(Middle)	Date of Birth (Month, Day, Year)	Social Security Number
SESSIONS	WILLIAM	STEELE	May 27, 1930	491 | 32 | 6388

Employing Department or Agency	Agency Location (City, State, Zip Code)
U.S.Dist.Court, W.D.Tx. ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS	655 East Durango Boulevard San Antonio, Texas 78206

3 To elect Basic Life, sign and date below. If you do not elect Basic Life, you may not elect any form of optional insurance. If you do not want any insurance at all, skip to section 5.

Basic Life

I want the Basic Life insurance. I authorize deductions to pay my share of the cost.

Signature (Do not print)	Date (Month, Day, Year)
William Sessions	3/10/81

4 If you have elected Basic Life, you may elect any or all of the following options. Sign the box below for any option(s) you want.

Option A - Standard

I want the Standard $10,000 optional insurance. I authorize deductions to pay the full cost.

Signature (Do not print)	Date
William Sessions	3/10/81

Option B - Additional

I want the Additional optional insurance in the multiple of my annual basic pay I indicate below. I authorize deductions to pay the full cost. (Indicate multiple by marking "X" in the appropriate box. Do not mark more than one box.)

X	1 times my pay		4 times my pay
	2 times my pay		5 times my pay
	3 times my pay		

Signature (Do not print)	Date
William Sessions	3/10/81

Option C - Family

I want the Family optional insurance. I understand that in the event of the death of my spouse I would receive $5,000 and upon the death of a child I would receive $2,500. I authorize deductions to pay the full cost.

Signature (Do not print)	Date

5 If you want NO life insurance coverage at all, sign and date below.

Waiver of all Life Insurance Coverage

I want no insurance coverage at all. I understand that any insurance I have will stop at the end of the pay period in which my employing office receives this waiver and that I cannot get Basic Life insurance unless I (1) wait at least one year after sign this form, (2) am under age 50 when I apply, AND (3) give satisfactory medical evidence of insurability. I understand that I cannot get any optional insurance unless I first have Basic Life.

Signature (Do not print)	Date

FOR EMPLOYING OFFICE USE ONLY

Certification

I cer[redacted] the above named employee is eligible for the insurance cov[redacted] she has [redacted]

Si[redacted]

Date of receipt in employing office (Month, day, year): March 27, 1981

See Table of Effective Dates in SF 2817A (SF 2817B for Postal Employees) to determine effective dates of coverage.

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[redacted] copy of this form, when certified by the employing office, together with SF 2817A, [redacted] Employees Group Life Insurance Program" (SF 2817B for Postal Employees), constitute [redacted] yee's Certificate of Insurance.

U.S. Office of Personnel Manag[redacted]

PART I—File in Official Personnel Folder

Treat as original

Standard Form 2817
(Formerly Standard Form 1
March 1981
FPM Supplement 870-1

ELECTION, DECLINATION, OR WAIVER OF LIFE INSURANCE COVERAGE

FEDERAL EMPLOYEES GROUP LIFE INSURANCE PROGRAM

IMPORTANT AGENCY INSTRUCTION ON BACK OF ORIGINAL

TO COMPLETE THIS FORM—

1 FOLLOW THESE GENERAL INSTRUCTIONS:

- Read the back of the "Duplicate" carefully before you fill in the form.
- Fill in BOTH COPIES of the form. Type or use ink.
- Do not detach.

2 FILL IN THE IDENTIFYING INFORMATION BELOW (please print or type): 334215

NAME (last) (first) (middle)	DATE OF BIRTH (month, day, year)	SOCIAL SECURITY NUMBER
SESSIONS, WILLIAM STEELE	May 27, 1930	491 32 6388
~~EMPLOYING DEPARTMENT~~ OR AGENCY	LOCATION (City, State, ZIP Code)	
Department of Justice - Criminal	Washington, D.C. 20530	

HAVE YOU EVER BEFORE FILED AN "ELECTION, DECLINATION, OR WAIVER OF LIFE INSURANCE COVERAGE"? ☐ YES ☒ NO

If "YES," your last such form remains in effect and you should not file this new form unless you want to change the old one. (See Instructions for Employees on page 4.)

3 MARK AN "X" IN ONE OF THE BOXES BELOW (do NOT mark more than one):

Mark here if you WANT BOTH optional and regular insurance → ☐ (A)

ELECTION OF OPTIONAL (IN ADDITION TO REGULAR) INSURANCE

I elect the $10,000 additional optional insurance and authorize the required deductio from my salary, compensation, or annuity to pay the full cost of the optional insuranc This optional insurance is in addition to my regular insurance.

Mark here if you DO NOT WANT OPTIONAL but do want regular insurance → ☑ (B)

DECLINATION OF OPTIONAL (BUT NOT REGULAR) INSURANCE

I decline the $10,000 additional optional insurance. I understand that I cannot elect c tional insurance until at least 1 year after the effective date of this declination and unle at the time I apply for it I am under age 50 and present satisfactory medical evider of insurability. I understand also that my regular insurance is not affected by this declir tion of additional optional insurance.

Mark here if you WANT NEITHER regular nor optional insurance → ☐ (C)

WAIVER OF LIFE INSURANCE COVERAGE

I desire not to be insured and I waive coverage under the Federal Employees Group L Insurance Program. I understand that I cannot cancel this waiver and obtain regular surance until at least 1 year after the effective date of this waiver and unless at the t I apply for insurance I am under age 50 and present satisfactory medical evidence of surability. I understand also that I cannot now or later have the $10,000 additio optional insurance unless I have the regular insurance.

4 DATE AND SIGN. RETURN THE ENTIRE FORM TO YOUR EMPLOYING OFFICE.

SIGNATURE (do not print): William Steele Sessions

DATE: August 27, 1969

FILE COPY

FOR EMPLOYING OFFICE USE ONLY

(official receiving date stamp) RECEIVED AUG 29 1969 CRIMINAL DIVISION

b6 b7C

See Table of Effective Dates on back of Original

ORIGINAL COPY—Retain in Official Personnel Folder

STANDARD FORM No. 176 APRIL 1968 FPM Supplement 870-1

Treat as original

ELECTION, DECLINATION, OR WAIVER OF LIFE INSURANCE COVERAGE

FEDERAL EMPLOYEES GROUP LIFE INSURANCE PROGRAM

IMPORTANT AGENCY INSTRUCTIONS ON BACK OF ORIGINAL

TO COMPLETE THIS FORM—

1 FOLLOW THESE GENERAL INSTRUCTIONS:

- Read the back of the "Duplicate" carefully before you fill in the form.
- Fill in BOTH COPIES of the form. Type or use ink.
- Do not detach.

2 FILL IN THE IDENTIFYING INFORMATION BELOW (please print or type):

NAME (last)	(first)	(middle)	DATE OF BIRTH (month, day, year)	SOCIAL SECURITY NUMBER
Sessions,	William	S.	May 27, 1930	491 | 32 | 6388

EMPLOYING DEPARTMENT OR AGENCY	LOCATION (City, State, ZIP Code)
Department of Justice-U.S. Attorney	San Antonio, Tx. 78296

HAVE YOU EVER BEFORE FILED AN "ELECTION, DECLINATION, OR WAIVER OF LIFE INSURANCE COVERAGE"? ☐ YES ☒ NO

If "YES," your last such form remains in effect and you should not file this new form unless you want to change the old one. (See Instructions for Employees on page 4.)

3 MARK AN "X" IN ONE OF THE BOXES BELOW (do NOT mark more than one):

Mark here if you WANT BOTH optional and regular insurance → ☐ (A)

ELECTION OF OPTIONAL (IN ADDITION TO REGULAR) INSURANCE

I elect the $10,000 additional optional insurance and authorize the required deduction from my salary, compensation, or annuity to pay the full cost of the optional insurance. This optional insurance is in addition to my regular insurance.

Mark here if you DO NOT WANT OPTIONAL but do want regular insurance → ☒ (B)

DECLINATION OF OPTIONAL (BUT NOT REGULAR) INSURANCE

I decline the $10,000 additional optional insurance. I understand that I cannot elect optional insurance until at least 1 year after the effective date of this declination and unless at the time I apply for it I am under age 50 and present satisfactory medical evidence of insurability. I understand also that my regular insurance is not affected by this declination of additional optional insurance.

Mark here if you WANT NEITHER regular nor optional insurance → ☐ (C)

WAIVER OF LIFE INSURANCE COVERAGE

I desire not to be insured and I waive coverage under the Federal Employees Group Life Insurance Program. I understand that I cannot cancel this waiver and obtain regular insurance until at least 1 year after the effective date of this waiver and unless at the time I apply for insurance I am under age 50 and present satisfactory medical evidence of insurability. I understand also that I cannot now or later have the $10,000 additional optional insurance unless I have the regular insurance.

4 DATE AND SIGN. RETURN THE ENTIRE FORM TO YOUR EMPLOYING OFFICE.

SIGNATURE (do not print) William S. Sessions

DATE August 1, 1969 EOD

FILE COPY

FOR EMPLOYING OFFICE USE ONLY

(official receiving date stamp)

NOTE: Employee transferred to San Antoni Texas ~~11/8/71~~ 11/8/5/71 from Wash.D. & at that time we did not receive file copy of SF-176-therefore had employee sign another form for CPO info. Ann Wood Accounting Cler

See Table of Effective Dates on back of Original

ORIGINAL COPY—Retain in Official Personnel Folder

STANDARD FORM No. 176
APRIL 1968
FPM Supplement 870-1
176-102

Treatment of Original

IMPORTANT EMPLOYEE INSTRUCTIONS ON PAGE 4	**LIFE INSURANCE COVERAGE** FEDERAL EMPLOYEES GROUP LIFE INSURANCE PROGRAM	IMPORTANT AGENCY INSTRUCTIONS ON PAGE 2

TO COMPLETE THIS FORM—

1 FOLLOW THESE GENERAL INSTRUCTIONS:

- Read page 4 carefully before you fill in the form.
- Fill in BOTH COPIES of the form. Type or print in ink.
- Do not detach.

2 FILL IN THE IDENTIFYING INFORMATION BELOW (please print or type):

NAME (last) (first) (middle)	DATE OF BIRTH (month, day, year)	SOCIAL SECURITY NUMBER
SESSIONS, WILLIAM STEELE	May 27, 1930	491 | 32 | 6388

EMPLOYING DEPARTMENT OR AGENCY	AGENCY LOCATION (City, State, ZIP Code)
Administrative Office United States Courts	Washington, D. C. 20544

HAVE YOU EVER BEFORE FILED THIS FORM? ☒ YES ☐ NO

If "YES," your last such form remains in effect and you should not file this new form unless you want to change the old one.

3 By law, a person, who can be covered, automatically receives regular life insurance, unless he waives all coverage. You have the choice of waiving all coverage, increasing your life insurance coverage through additional optional insurance, or declining the additional optional insurance. So, READ CAREFULLY AND THEN

MARK AN "X" IN ONE OF THE BOXES BELOW (DO NOT MARK MORE THAN ONE):

Mark here for BOTH OPTIONAL AND REGULAR insurance. → [X] **A** — I WANT THE $10,000 OPTIONAL INSURANCE in addition to my regular insurance. I authorize deductions to pay the full cost.

Mark here for REGULAR BUT NO OPTIONAL insurance. → [ ] **B** — I DO NOT WANT THE $10,000 OPTIONAL INSURANCE but I understand I still get my regular insurance. I understand I cannot get optional insurance, unless I: (1) wait at least one year after I sign this form, (2) am under age 50 when I apply, AND (3) give satisfactory medical evidence of insurability.

Mark here for NO INSURANCE AT ALL. → [ ] **C** — I DO NOT WANT ANY LIFE INSURANCE NOW. I understand that I cannot get any regular insurance, unless I: (1) wait at least one year after I sign this form, (2) am under age 50 when I apply, AND (3) give satisfactory medical evidence of insurability. I understand I cannot get the $10,000 optional insurance unless I first have the regular insurance.

4 DATE AND SIGN. RETURN THE ENTIRE FORM TO YOUR EMPLOYING OFFICE.

SIGNATURE (do not print)

William Steele Sessions

DATE

April 1, 1975

RECEIVED
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APR 04 1975

WESTERN DISTRICT
OF TEXAS
San Antonio DIVISION

See Table of Effective Dates on back of Original

ORIGINAL COPY—Retain in Official Personnel Folder

STANDARD FORM No. 176
MARCH 1973
FPM Supplement 870–1
176–103

Treat as original

DATE: 07-20-1993

CSRS OFFSET
EMPLOYEE DATA

EMPLOYEE NAME:	WILLIAM S. SESSIONS
DATE OF BIRTH:	05/27/1930
SERVICE COMPUTATION DATE:	11/08/1964
DATE OF RETIREMENT:	07/19/1993
EMPLOYEE'S AGE AT RETIREMENT:	63 YEARS 1 MONTHS
HIGH-3 AVERAGE SALARY:	$123,884
UNPAID REDEPOSIT AMOUNT:	$ 21,145.00

** CSRS SERVICE CREDIT:	28 YEARS	8 MONTHS	12 DAYS
TOTAL CREDIT:	28 YEARS	8 MONTHS	12 DAYS

** [INCLUDES: 4 YEARS 8 MONTHS 25 DAYS MILITARY SERVICE]

"ESTIMATED"
VOLUNTARY RETIREMENT BENEFITS

	ANNUALLY	MONTHLY
CSRS BASIC ANNUITY:	$ 66,372.00	$ 5,531.00
EST. SOCIAL SECURITY OFFSET:	- 2,184.00	- 182.00
UNPAID REDEPOSIT REDUCTION:	- 1,416.00	- 118.00
COST OF SURVIVOR BENEFITS:	- 6,360.00	- 530.00
ESTIMATED NET ANNUITY:	$ 56,412.00	$ 4,701.00
(x) HEALTH INSURANCE PREMIUM:	- 2,032.92	- 169.41
(xx) LIFE INSURANCE PREMIUMS:	- 583.44	- 48.62
NET BENEFITS:	$ 53,795.64	$ 4,482.97
FULL SURVIVING SPOUSE'S ANNUITY:	$ 36,504.00	$ 3,042.00

NOTE: SPOUSE'S ANNUITY MAY BE REDUCED IF SOCIAL SECURITY IS PAYABLE.

(x) [Health Plan Enrollment Code: 442 - 1993 Premium Rate]
(xx) [Total Regular Life Insurance Coverage At Retirement: $136,000]
[Age 65 Basic Life Insurance Reduction Elected: 75%]

BASIC MONTHLY ANNUITY

TAXABLE PORTION: $4,313.64 NONTAXABLE PORTION: $387.36 *

* {NONTAXABLE PORTION OF MONTHLY ANNUITY WILL END WHEN TOTAL OF ALL BENEFIT PAYMENTS EXCLUDED FROM TAXES EQUALS $ 92,967}

CSRS

AGENCY CHECKLIST OF IMMEDIATE RETIREMENT PROCEDURES

CIVIL SERVICE RETIREMENT SYSTEM

Section A - Employing Office Checklist: To be completed by office maintaining Official Personnel Folder (OPF).

1. Name of applicant *(Last, first, middle)*	2. Date of birth *(Month, day, year)*	3. Social Security Number
Sessions, William S.	5-27-30	491-32-6388

4. Type of retirement

- [ ] Age *(Mandatory)*
- [ ] Optional *(Other than "Early Optional")*
- [ ] Early Optional *(Includes major RIF, reorganization, transfer of function)*
- [X] Discontinued Service *(Involuntary separation)*
- [ ] Disability

5. Special provisions *(Check any applicable)*

- [ ] Law enforcement / firefighter
- [ ] Air traffic controller
- [ ] Other *(Specify below)*

6. Is the applicant eligible to continue health benefits insurance into retirement (enrolled for the 5 years of service immediately preceding the annuity commencing date or for the full period(s) of service during which coverage was available)? See Section C if Open Season change is involved.

- [X] Yes → Enrollment Code 442
- [ ] No → Give reason:

7. Is the applicant eligible to continue life insurance into retirement (enrolled for the 5 years of service immediately preceding the annuity commencing date or for the full period(s) of service during which coverage was available)?

- [X] Yes — Complete 7a.
- [ ] No — Give reason:

7a. The applicant can continue Basic Life insurance and the following options:

- [X] No optional insurance
- [ ] Option A - Standard
- [ ] Option B - Additional with the following multiples: [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5
- [ ] Option C - Family

8. Are the following documents attached or actions taken? Indicate by an "X" for each item.

	Yes	Not Applicable
a. SF 2801*	X	
b. If applicant served in the military, or applied for military retired pay or DOVA benefits in lieu of military retired pay, or applied for OWCP benefits, Schedules A, B, C of SF 2801	X	
c. SF 2801-1*, including information on post-April 6, 1986 part-time service, if applicable	X	
d. If applicant is married, and elects less than the maximum survivor benefit, SF 2801-2*		X
e. If applicant elects a survivor annuity for a former spouse, SF 2801-3*. (Also, SF 2801-2, if applicant is married)		X
f. If applicant has military service, DD 214 or its equivalent, if available	X	
g. If applicant wants a refund of military service deposit because he/she does not want to waive military retired pay, SF 2802*		X
h. If applicant wants to waive military retired pay, copy of waiver request and response from Military Retired Pay Center, if available		X
i. If post-1956 military service is involved and applicant has not made application to make a military service deposit, OPM Form 1515*		X
j. If post-1956 military service deposit is not made, was applicant counseled about the effects of not paying the deposit?		X
k. If discontinued service retirement, documentation specified in Chapter 44, FPM Supplement 830-1, including OPM Form 1510* and attachments, if available	X	
l. If early optional retirement, enter OPM Authority Number		
m. If law enforcement / firefighter, documentation specified in Section 831.907 of title 5, Code of Federal Regulations**		X
n. If applicant wants check deposited directly to his/her bank account, SF 1199A		X
o. If OPM has approved disability retirement, RI 30-27 (formerly BRI 46-48)		X
p. If employee has applied for compensation benefits, OWCP award, if available		X
q. All documents applicant shows attached to SF 2801	X	---
r. Agency estimates of annuity, if prepared	X	

9. If the annuity is not for disability, are the following documents attached?

	Yes	Not Applicable	Sent to OWCP
a. All SF 2809's* in the applicant's OPF	X		
b. SF 2810* transferring enrollment to retirement system, if applicable, or SF 2810* terminating enrollment	X		
c. All other SF 2810's* in applicant's OPF	X		
d. SF 2821*	X		
e. All SF 2817's*, SF 176's*, SF 176T's*	X		
f. SF 2818*	X		
g. All SF 54's* and SF 2823's* in the applicant's OPF		X	

10. If retirement is for disability, is documentation specified in FPM Supplement 830-1** including SF 2824* package attached?

- [ ] Yes
- [ ] No → Give reason N/A

* See back for titles of forms referred to above.

** Postal Service personnel should refer to Part 560 of the Employee and Labor Relations Manual (ELM).

11. List any documents attached which are not listed on the front of this checklist.

12. Certification by the Chief Personnel Officer or Designee

I certify that [redacted] state verified information in official records and that the applicant has sufficient service to be entitled to an annuity. b6 b7C

Signature	Address
[redacted]	Federal Bureau of Investigation 10th & Pa. Ave., N.W. Washington, D.C. 20535
Official Title Retirement Programs Analyst	
Person to contact for further information [redacted]	Telephone Number *(including Area Code)* (202) 324-2945
	Submitting Office Number *(SON)*

Offenses Barring Annuity Payments: Public Law 87-299 prohibits payment of annuity to persons who have committed specified offenses involving the national security of the United States. Employing agencies are responsible for submitting all pertinent information to the Office of Personnel Management, Retirement and Insurance Group, in any case when this law possibly applies.

Section B - Payroll Office Checklist: To be completed by the office maintaining the Individual Retirement Record *(SF 2806)*. If the appropriate response to a question is "Not Applicable," leave blank. **IMPORTANT:** The SF 2806 must be closed out and received by OPM within 30 days of the employee's date of separation.

	Yes	No*
1. Does the SF 2806 for the applicant named in Section A contain all information necessary to comply with OPM instructions for maintaining Individual Retirement Record?	X	
2. Is applicant's sick leave balance shown on SF 2806?		
3. Is applicant's last day in pay status shown on SF 2806?	X	
4. Is the applicant's health benefits status posted on SF 2806?	X	
5. If this is a preliminary SF 2806 for disability retirement, is applicant's life insurance status posted?		
6. If applicant is continuing life insurance into retirement, is the SF 2821 with Payroll certifying signature attached?	X	
7. If employee applied to pay post-1956 military deposit, is OPM Form 1514 (Military Deposit Worksheet) attached?		
8. Has applicant made a military service deposit with your agency?		X
8a. If "yes", is an SF 2806 for the deposit attached?		

	Yes	No*
9. Does the applicant have any part-time service on or after April 7, 1986?		
9a. If "yes", is the number of hours in each scheduled tour of duty and the date of each change in tour of duty posted on the SF 2806 or SF 2806-1 (including changes to full-time and intermittent status)? Also, show what a full-time tour of duty would be, total number of hours actually worked, and what total number of hours would have been if employee had always worked full-time.		
10. If the applicant is a postal employee, are postal earnings for non-deduction service shown on SF 2806?		
11. Disposition of SF 2806: SF 2806 and Register of Separations and Transfer (SF 2807) are attached.	X	
If SF 2806 was already forwarded provide the following:		

Forwarded to:

SF 2807 Number:

Date of SF 2807:

* 12. Explain any "No" responses here:

13. Certification by the Chief Payroll Officer or Designee

I certify that the above accurately reflects official records maintained by this office.

Signature	Telephone Number (including Area Code)
[redacted] AUTHORIZED CERTIFYING OFFICER	202 324-5880
Payroll Office Number 15-02-0001	Date 07-29-93

b6 b7C

THRIFT SAVINGS PLAN
VALIDATION OF RETIREMENT INFORMATION

TSP–18

Instructions

To be completed by the Employing Agency Office.

Please type or print the information on this form. Send completed forms to:

Thrift Savings Plan Service Office
National Finance Center
P.O. Box 61135
New Orleans, LA 70161–1135

SECTION A – IDENTIFICATION

Block 1, Name. Enter the employee's last, first, and middle name.

Block 2, Date of Birth. Enter the employee's date of birth.

Block 3, Social Security Number. Enter the employee's 9–digit social security number.

Blocks 4 through 8, Address. Enter the employee's address.

SECTION B – RETIREMENT CATEGORY

Block 9, Payroll Office Number. Enter the employee's 8–digit payroll office number.

Block 10, Separation Date. Enter the employee's date of separation.

Block 11, Retirement Category. Check the appropriate block to indicate the employee's eligibility for retirement benefits. For the purpose of this form, the following applies:

Immediate refers to any FERS participant who separates from Government service entitled to an immediate annuity under 5 USC Chapter 84, Subchapter II, or any CSRS participant entitled under 5 USC Chapter 83, Subchapter III.

Deferred refers to any FERS participant who separates from Government service entitled to a deferred annuity under 5 USC Chapter 84, Subchapter II, or any CSRS participant entitled under 5 USC Chapter 83, Subchapter III. If the employee is retiring under FERS with eligibility for an immediate reduced annuity, but is electing to take a deferred annuity, treat the employee as eligible for the immediate annuity.

Disability/workers' compensation refers to any FERS or CSRS participant who separates from Government service entitled to benefits under 5 USC Chapter 81, Subchapter I or who is entitled to disability benefits under 5 USC Chapter 84, Subchapter V (FERS employees) or 5 USC Chapter 83, Subchapter III (CSRS employees).

Block 12, Entitlement Date. If the employee is eligible for retirement benefits, indicate the date he or she would be entitled to receive the basic annuity payment. This would be the date the employee attained the age that would make him or her eligible to receive a deferred annuity, not the date when the annuity would actually begin. This block must be completed regardless of the employee's intent to withdraw his or her basic annuity contribution. If the employee is entitled to disability benefits under 5 USC Chapter 83 or 84, or separates entitled to benefits under 5 USC Chapter 81, Subchapter I, indicate the date benefits started or will start. If "None" is indicated in Block 11, leave Block 12 blank.

SECTION C – BENEFICIARY INFORMATION (Check One)

Check **Block 13** if Form TSP – 3, Designation of Beneficiary, is attached.
Check **Block 14** if there is no Form TSP – 3 on file for this individual.

SECTION D – CERTIFICATION

Block 15, Typed Name and Address of Certifying Agency Official. Enter the name and address of the agency official certifying the information on this form.

Block 16, Phone (Area Code and Number). Enter the area code and phone number of agency official.

Block 17, Signature of Certifying Agency Official. Signature of the agency official authorized to certify the information on this form.

Block 18, Date Signed. Enter the date this form is certified.

SECTION A – IDENTIFICATION.

1. NAME (Last)	(First)	(Middle)	2. DATE OF BIRTH Month	Day	Year	3. SOCIAL SECURITY NUMBER		
SESSIONS	WILLIAM	S.	5	27	30	491	32	6388

4. FIRST LINE ADDRESS	5. SECOND LINE ADDRESS	
3920 Argyle Terrace , N.W.		
6. CITY	**7. STATE/COUNTRY**	**8. ZIP CODE**
Washington, D.C.	USA	20011

SECTION B – RETIREMENT CATEGORY.

9. PAYROLL OFFICE NUMBER	10. SEPARATION DATE Month	Day	Year	11. RETIREMENT CATEGORY	12. ENTITLEMENT DATE Month	Day	Year
15-02-0001	7	19	93	☐ None ☐ FERS/CSRS Deferred ☒ FERS/CSRS Immediate ☐ Disability/Workers' Compensation ☐ Death	7	20	93

SECTION C – BENEFICIARY INFORMATION. (Check One)

☐ 13. The most recent Form TSP–3, Designation of Beneficiary, from the participant's Official Personnel Folder is attached.

☒ 14. I have reviewed the participant's Official Personnel Folder and there is no Form TSP–3, Designation of Beneficiary, on file.

SECTION D – CERTIFICATION.

15. TYPED NAME AND ADDRESS OF CERTIFYING AGENCY OFFICIAL	16. PHONE (Area Code and Number)	FTS	COMM
Federal Bureau of Investigation 10th St. & Pa. Ave., N.W. Washington, D.C. 20535	(202) 324-2945	X	X
17. SIGNATURE OF	**18. DATE SIGNED**		
	7-20-93		

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FORM TSP – 18 (4/89)

PRIVACY ACT NOTICE

We are authorized to request this information under Title 5, U.S. Code Chapter 84, Federal Employees' Retirement System, Subchapter III, Thrift Savings Plan. Executive Order 9397 authorizes us to ask for the employee's social security number, which will be used to identify the employee's account. We will use the information given us in administering the Thrift Savings Plan. We may share this information with the Office of Personnel Management. The information may be shared with other Federal agencies or Congressional offices for certain official purposes. It may also be shared with national, state, and local agencies to determine benefits under their programs, to obtain information necessary under this program, or to report income for tax purposes. In addition, we may share this information with law enforcement agencies when they are investigating a violation of civil or criminal law. Finally, we may give this information to financial institutions, private sector audit firms, annuity vendors, beneficiaries, current spouses and, to a limited extent, former spouses. While the law does not require you to give any of the information we are asking for on this form, it may not be possible to process the form if you do not give us this information.

Copy 1 – PERSONNEL OFFICE

FEDERAL BUREAU OF INVESTIGATION
CITICORP DINERS CLUB ACCOUNT

CANCELLATION NOTIFICATION

RE: William S Sessions

Please cancel the above Diners Club Government Account for the following reason(s):

(X) Employee left Bureau

( ) Employee no longer authorized to charge

Disposition of the card (if applicable) is as follows:

( ) Enclosed

( ) Unavailable (Reason)_____

_____.

Dated 7/[illegible].

Employee Signature

Account Number

Sincerely,

FBIHQ Program Director's Signature

7/14/93

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FEDERAL BUREAU OF INVESTIGATION
CITICORP DINERS CLUB ACCOUNT

CANCELLATION NOTIFICATION

RE: [redacted]

Please cancel the above Diners Club Government Account for the following reason(s):

(X) Employee left Bureau

( ) Employee no longer authorized to charge

Disposition of the card (if applicable) is as follows:

( ) Enclosed

( ) Unavailable (Reason)_____

_____.

Dated 7/[redacted].

[redacted]
Employee Signature

[redacted]
Account Number

Sincerely,

7/21

[redacted]
FBIHQ Program Director's Signature

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Standard Form 50-B
Rev. 7/91
U.S. Office of Personnel Management
FPM Supp. 296-33, Subch. 4

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle)	2. Social Security Number	3. Date of Birth	4. Effective Date
SESSIONS WILLIAM S	491-32-6388	05-27-30	07-19-93

FIRST ACTION

5-A. Code	5-B. Nature of Action
330	REMOVAL
5-C. Code	5-D. Legal Authority U. S. CONSTITUTION, ARTICLE II, SECTION 2
5-E. Code	5-F. Legal Authority

SECOND ACTION

6-A. Code	6-B. Nature of Action
6-C. Code	6-D. Legal Authority
6-E. Code	6-F. Legal Authority

7. FROM: Position Title and Number

DIRECTOR
SA-02-005 005

8. Pay Plan	9. Occ. Code	10. Grade/Level	11. Step/Rate	12. Total Salary	13. Pay Basis
EX	1811	02	00	133,600.00	PA

12A. Basic Pay	12B. Locality Adj.	12C. Adj. Basic Pay	12D. Other Pay
133600.00		133600.00	

14. Name and Location of Position's Organization

FEDERAL BUREAU OF INVESTIGATION
DIRECTOR'S OFFICE 0010
WASHINGTON, D. C.

15. TO: Position Title and Number

16. Pay Plan	17. Occ. Code	18. Grade/Level	19. Step/Rate	20. Total Salary/Award	21. Pay Basis

20A. Basic Pay	20B. Locality Adj.	20C. Adj. Basic Pay	20D. Other Pay

22. Name and Location of Position's Organization

EMPLOYEE DATA

23. Veterans Preference: 2 (1 – None; 2 – 5-Point; 3 – 10-Point/Disability; 4 – 10-Point/Compensable; 5 – 10-Point/Other; 6 – 10-Point/Compensable/30%)

24. Tenure: 0 (0 – None; 1 – Permanent; 2 – Conditional; 3 – Indefinite)

25. Agency Use:

26. Veterans Preference for RIF: X YES ☐ NO

27. FEGLI: C BASIC ONLY

28. Annuitant Indicator: 9

29. Pay Rate Determinant: 0

30. Retirement Plan: C FICA & CSRS (PARTIAL)

31. Service Comp. Date (Leave): 11-07-64

32. Work Schedule: F

33. Part-Time Hours Per Biweekly Pay Period:

POSITION DATA

34. Position Occupied: 2 (1 – Competitive Service; 2 – Excepted Service; 3 – SES General; 4 – SES Career Reserved)

35. FLSA Category: E (E – Exempt; N – Nonexempt)

36. Appropriation Code:

37. Bargaining Unit Status:

38. Duty Station Code:

39. Duty Station *(City – County – State or Overseas Location)*

40. AGENCY DATA	41.	42.	43.	44.
		EFF HR: 00		

45. Remarks
REMOVED BY ORDER OF THE PRESIDENT

PLEASE RETAIN FOR YOUR RECORDS

46. Employing Department or Agency	47. Agency Code	48. Personnel Office ID	49. Approval Date
FEDERAL BUREAU OF INVESTIGATION	DJ02	4017	

50. Signature/Authentication and Title of Approving Official
Assistant Director
Administration Services Division